2023 IL App (1st) 221343-U

SIXTH DIVISION
March 31, 2023

No. 1-22-1343

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Albert M. Muniz, Jr.,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 16 000060
	)	
Christine E. Boyd,	)	The Honorable
	)	Renee Goldfarb,
Respondent-Appellee.	)	Judge, presiding

JUSTICE TAILOR delivered the judgment of the court.
Justices C.A. Walker and Oden Johnson concurred in the judgment.

ORDER

Held: The judgment of the circuit court is affirmed. The finding of the circuit court that it is in the best interest of the child to relocate to Westfield, Indiana is not against the manifest weight of the evidence.

¶ 1 Appellant Albert M. Muniz (Albert) appeals from the circuit court's entry of judgment in favor of appellee Christine E. Boyd (Christine) on Christine's petition for relocation of their teenage son. For the reasons that follow, we affirm the judgment.

¶ 2 I. BACKGROUND

¶ 3 The circuit court entered a judgment for dissolution in the marriage of Albert and Christine

on June 20, 2018. Albert and Christine's son, A.M., was born on May 12, 2009. Prior to the dissolution judgment, the circuit court entered an allocation order on June 30, 2016, providing Albert and Christine equal parenting time and decision-making over A.M.

¶ 4 Between 2017 and 2019, A.M. was diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD), Obsessive Compulsive Disorder (OCD), and significant anxiety. A.M. attended South Loop Elementary School (SLES), a Chicago public school, located in Chicago's south loop neighborhood, where he was supposed to receive medically necessary and reasonable accommodations pursuant to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq*, also known as a 504 plan.

¶ 5 On June 28, 2021, Christine filed a post-judgment petition for relocation and modification of allocation judgment pursuant to sections 609.2 and 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Act), (750 ILCS 5/609.2 and 610.5) (West 2016). Christine sought to relocate A.M. to Westfield, Indiana, where her then fiancé (and now husband) lived. Additionally, Christine sought sole responsibility for major decisions relating to A.M.'s education through high school. Albert objected to both requests.

¶ 6 On July 12, 2021, Christine filed a motion to appoint a guardian *ad litem*. The circuit court appointed Lester Barclay, who issued a report and recommendation on April 25, 2022.

¶ 7 The circuit court held a trial on Christine's petition over four days.

¶ 8 A. Christine Boyd's Case in Chief

¶ 9 1. Testimony of Lester Barclay, Guardian *ad Litem*

¶ 10 Barclay testified that he interviewed Christine, Albert, and A.M., as well as family members and school representatives, including: Albert's father and brother; A.M.'s therapist; Christine's husband Chris Barrows and Barrows' mother; representatives from the elementary,

middle, and high schools in Westfield, Indiana; and representatives from Metropolitan School, a small private school in Chicago.

¶ 11 A.M. has anxiety, which is partly related to the well-being of his parents, especially his father's well-being and mortality. A.M. had lesser concerns about his mother's well-being. A.M.'s relationship with Albert was "clingy." A.M. expressed a desire to remain in Chicago and not move to Westfield because of his father and his friends.

¶ 12 As part of his investigation, Barclay studied educational opportunities for A.M. Albert provided a list of potential schools in Chicago, initially recommending Metropolitan School but later backtracking to advocate that A.M. remain at SLES based on A.M.'s wishes. Despite reaching out to SLES multiple times, no one from SLES ever responded to Barclay. A.M.'s grades were "poor" and SLES did not serve him well despite the 504 plan. Christine and Albert expressed frustration with the implementation of the 504 plan and, generally, did not think the plan was effective.

¶ 13 Barclay concluded that the middle and high schools in Westfield, Indiana would provide A.M. with a supportive learning environment, including classroom pullouts, peer programs, and an on-site therapist. Westfield schools provided services that are superior to any services that Chicago public schools could offer. Barclay went to Westfield, Indiana, where he met with Christine, A.M., Chris, and Chris' son and mother. Barclay observed that A.M. seemed comfortable in the environment and watched the positive interactions between A.M. and Chris' son.

¶ 14 Barclay recommended that A.M. attend Metropolitan School in Chicago if Albert could pay the $50,000 annual tuition through high school. If Albert could not pay the cost of enrollment at Metropolitan, Barclay recommended that A.M. attend the Westfield, Indiana public schools.

¶ 15 On cross-examination, Barclay testified that across-the-board students' grades have diminished in the last two years because of the pandemic, remote learning, and loss of socialization and increased isolation. Students like A.M. who have special needs have not done as well because of lack of one-on-one instruction. On redirect, he testified that A.M.'s grades remained poor despite his return to in-person learning. Barclay opined that there are public schools in Chicago that could provide a superior learning environment for A.M. but that it was not his role to evaluate schools other than the ones the parents suggested. Because the schools on Albert's list were private schools with high admissions standards, they were unlikely to accept A.M. because of his academic record.

¶ 16 2. Testimony of Albert Muniz

¶ 17 Albert testified that while he was advocating that A.M. remain at SLES for eighth grade, he did not want A.M. to attend the neighborhood high school. While he initially advocated that A.M. attend Metropolitan School, Albert reconsidered his position on SLES because A.M. had a good fall semester at SLES, A.M. wanted to stay at SLES, and A.M. was happy to go to school and do his homework. However, A.M. was "floundering" during the spring semester.

¶ 18 SLES has not consistently followed A.M.'s 504 plan and some teachers have been better than others. Albert was concerned about A.M. falling behind because some of his teachers did not follow the 504 plan, even prior to the pandemic. Despite inquiring about an Individualized Educational Plan (IEP) for A.M., an IEP was not guaranteed. He assumed that if A.M. attended a school in Westfield, he would receive an IEP. Nevertheless, he still did not support the relocation.

¶ 19 In moments of anger, Albert had previously commented that SLES was incapable of giving A.M. what he needed in school, and the school "sucks." Albert previously suggested that he and Christine should sue SLES.

¶ 20 3. Testimony of Chris Barrows

¶ 21 Chris testified that he is married to Christine and lives in Westfield, Indiana with his son. He is a commissioner at the Title IV-D court (which hears child support matters) in Hamilton County, Indiana, and is an attorney with a private practice focused on family law. He is occasionally appointed guardian *ad litem* in cases.

¶ 22 Chris has lived in Westfield for most of his life and found it to be a great community with good schools and opportunities for employment. Westfield is family friendly and safe. Chris' father was a teacher for 30 years and his mother is currently an instructional assistant at a Westfield school. A.M. has his own room in Chris' home and has a good relationship with Chris' son, who he spends considerable time with.

¶ 23 Chris is knowledgeable about the accommodations available at the Westfield schools because his own son and daughter have disabilities and attended the schools there. For example, the school is able to design a schedule accommodating student's preferences, there is a counselor on-site, students in special education classes receive pull-out services, students receive extra time to complete tasks, and students are allowed breaks throughout the day. Westfield special education students can enroll in a basic skills development class designed to allow students to complete their work with the assistance of a special education teacher. He was satisfied with the services at the school as a parent.

¶ 24 On cross examination, Chris testified that he had not read A.M.'s 504 plan and that there was no guarantee that A.M. would receive an IEP at Westfield, but that he would likely receive a 504 plan. Similarly, Chris admitted that there was no guarantee that A.M. would receive pull-out services.

¶ 25 4. Testimony of Valarie Boyd

¶ 26 Valarie Boyd (Valarie) is Christine's mother and lives in central Michigan. She supports the relocation because A.M. has been struggling at school and from what she had heard, the schools in Westfield "could be very positive." She stated that A.M. hates school. On cross examination, Valarie acknowledged that information regarding A.M.'s school came from Christine.

¶ 27 5. Testimony of Christine Boyd

¶ 28 Christine testified that A.M. was diagnosed with ADHD in 2017 and OCD in 2019 and takes medication for both. A.M. began therapy after completing a daytime hospitalization program for three weeks at Compass designed for kids with OCD. A.M. had a tutor and goes to therapy with Dr. Searcy.

¶ 29 Christine filed the relocation petition in part due to A.M.'s trouble in school and her dissatisfaction with SLES. A.M.'s trouble in school began in kindergarten. In kindergarten, A.M.'s teacher requested an IEP evaluation and then Christine and Albert requested one in second or third grade. However, A.M. never received an IEP, and the school only provided a 504 plan. Teachers implemented some of the 504 plan but only after Christine and Albert "asked a lot."

¶ 30 Christine provided examples of the school not implementing the 504 plan. A teacher made A.M. responsible for remembering to walk to the office and ask for his medication. Over the years, teachers had not reminded A.M. to turn in his homework. In another example, teachers would take away A.M.'s recess if he had not completed his work.

¶ 31 Christine, having examined A.M.'s transcripts, opined that A.M. could not get into a competitive high school in Chicago. The local neighborhood Chicago public high school is a vocational school.

¶ 32 Christine's Chicago neighborhood had become less safe over the last two years. She observed people outside her home looting and fighting and heard loud "pops." These changes

caused Christine to stop walking around the neighborhood in the latter part of the day.

¶ 33 Christine researched Westfield schools and sent materials to Albert. Christine also investigated the Metropolitan School but was concerned that it was an extremely small private school. She was also concerned that there were vague community standards, and the size of the school would shrink A.M.'s world. Furthermore, the school did not provide sports, music classes, and was unaccredited. Christine had a long-term objection to A.M. attending a private school.

¶ 34 Another reason Christine wanted to move to Westfield is because her husband lives there. Barclay's report and recommendation lists Christine's address as Westfield, Indiana. In addition, the address on her add-on gym membership was Westfield, Indiana, and Christine signed a loan agreement related to Chris' house. Christine extended her lease in Chicago only through August, 2022.

¶ 35 On cross-examination, Christine testified that SLES denied some of A.M.'s accommodations under the 504 plan and inconsistently applied the plan. For example, A.M. had been denied a pass to the nurse. A.M. had not been given a pass to the counselor or social worker when he felt emotionally escalated and anxious. Some teachers had not provided frequent check-ins with A.M., nor have some teachers provided A.M. with preferential seating. Some teachers had not provided clear directions or structured work breaks. Teachers have consistently denied A.M. nonverbal cues to get him back on task.

¶ 36 Christine had not made a request for mediation or alternative dispute resolution to address the 504 plan; however, she did file a complaint with Office of Civil Rights but because of the pandemic the complaint "petered out." She did not file any additional complaints, pursue litigation, or retain a lawyer.

¶ 37 6. Doctor Jasmin Searcy

¶ 38 Dr. Searcy testified that she has a doctorate in clinical psychology with a specialty in child and pediatric psychology, is a licensed clinical psychologist in Illinois, and can practice virtually in Indiana. Dr. Searcy had been seeing A.M. for a year and A.M. came to her for therapy services from Compass, which provided a higher level of care for his OCD disorder. She also provides A.M. with support for his ADHD and anxiety.

¶ 39 A.M. has difficulties with the thought of change. Although change is inevitable, she had concerns about A.M.'s ability to adjust to new situations and environments. For example, how A.M.'s parents connect, talk, and co-parent is "one piece of the puzzle." She also expressed a concern about A.M. potentially attending virtual therapy sessions and adjusting to a new school. She recommended a 90-day transition period for A.M. but that it could be shorter or longer depending on his parents and his own ability to adapt.

¶ 40 B. Albert's Case in Chief

¶ 41 1. Doctor Jasmin Searcy

¶ 42 Dr. Searcy testified that treatment over Zoom would not suit the type of service A.M. requires. For that reason, she recommended that A.M. transition to another therapist if he were to relocate to Indiana. She opined that changing therapists would cause A.M. anxiety because A.M. would not know the expectations and routines. Relocating will generally cause A.M. anxiety, but the anxiety is more about the unknown.

¶ 43 A.M. prefers to stay in Chicago because of his school, friends, and his father. A.M. is concerned about Albert's health and that he lives alone.

¶ 44 Dr. Searcy noticed changes in A.M. when Christine and Albert first mentioned the possibility of moving to Indiana. A.M.'s anger increased as a result and he "let go with school and academics." To some degree this impacted his grades. A.M.'s anger about the potential relocation

had improved over two months of therapy.

¶ 45 Whether or not A.M. can make new friends depends on the circumstances. For example, although kids with ADHD can be immature and that can cause difficulties with making friends, she stated that A.M. generally can make friends and that friends are important to him.

¶ 46 A.M.'s therapy will need adjustments because there may not be specialists to treat his OCD. Additionally, the level of anxiety A.M. may experience due to the change of therapy will depend on the therapist. Moreover, there should be a transition period between therapists culminating in a "warm handoff." While A.M. transitioning to high school would also constitute change, there would still be some constants, namely that he would remain in the same city with his friends and his father.

¶ 47 2. Testimony of Alisha Tapia

¶ 48 Tapia testified that she is a licensed social worker at SLES. Tapia first met A.M. at a 504-plan meeting in 2019. While there have been changes to A.M.'s 504 plan, there have not been any major changes. She directly worked with A.M. to help him stay organized and reduce his anxiety. Prior to the pandemic and the start of remote learning, Tapia would check-in with A.M. every other week. During remote learning and at the time of the trial, instead of directly speaking to A.M., Tapia consulted with A.M.'s teachers.

¶ 49 There is a pending referral for an IEP from Albert and a meeting would occur when the 2022/23 school year begins. When someone requests an IEP, a team comprised of a special education teacher, a case manager, and a clinician determine if an evaluation is warranted. If they determine an evaluation is necessary, they schedule one with a social worker or a school psychologist to determine what, if any, academic needs an IEP could address. The school has 60 days to complete the evaluation, at which point the team decides whether the student qualifies for

an IEP.

¶ 50 Tapia explained that an IEP is under the supervision of a special education teacher and SLES has four or five special education teachers. A 504 plan relates to accommodations from the general teacher directly. While a 504 plan allows for pull-out services provided by a clinician like Tapia, it does not allow for academic individual support outside the general classroom.

¶ 51 SLES has the necessary educational services to meet the needs of students with special educational needs.

¶ 52 3. Testimony of Philip Williams

¶ 53 Williams testified that he is a case manager at SLES. As case manager, Williams oversees all 504 plans and IEPs from start to finish and manages around 100 IEP's and about 80 504 plans. One of his duties is to ensure the implementation of 504 plans. The school implemented A.M.'s 504 plan between 2020 and 2021. He received complaints from Albert and Christine about teacher communication and had a 504-plan meeting with the parents and teacher but did not recall the exact outcome.

¶ 54 He would schedule an IEP meeting once the school year begins. If A.M. qualifies for an IEP, a special education teacher will be responsible for actual accommodations, but Williams would also oversee the implementation.

¶ 55 4. Tara Shelton

¶ 56 Shelton testified that she is the principal at SLES and has known A.M. from the time he began school at SLES. She has spoken to both Christine and Albert in the last year. She and Christine do not always agree and at times Christine can be "rude" but they do have a good relationship. The conversations she has had with Albert are cordial.

¶ 57 Shelton resolved every complaint made by Albert and Christine. She does not have any

responsibility related to the 504 plans other than to ensure their implementation. To the best of her knowledge, A.M.'s 504 plan had been implemented.

¶ 58 5. Testimony of Lester Barclay

¶ 59 Barclay expressed disappointment in Christine and Albert that neither investigated more schools. Barclay testified he received a list of about thirteen schools from Albert but that he only investigated Metropolitan. Christine did not investigate any Chicago schools other than Metropolitan and Wolcott School, and Albert did not investigate Westfield schools. Barclay testified that he only found out that Albert no longer wanted to send A.M. to Metropolitan weeks before the trial and after he had prepared the report. Barclay indicated that schools in Westfield are excellent but that if A.M. could attend Metropolitan School he should.

¶ 60 In his report, Barclay considered the factors enumerated in section 609.2 (g). He concluded that factor one—the reasons for the relocation—favors relocation because Christine's reasons for moving, to reside with her husband and provide a better school environment for A.M., were made in good faith. Factor two—the reasons why Albert objects to relocation—disfavors relocation. Factor three—quality of each parent's relationship with the child—was neutral because both Christine and Albert have a strong relationship with A.M. Factor four—the educational opportunities at both locations—was also neutral.

¶ 61 Factor five—presence or absence of extended family at both locations—was also neutral. A.M. does not have any extended family, other than his new family, in Indiana. Factor six—impact on the child—does not favor relocation because the relocation will cause A.M. anxiety. Factor seven—the court's ability to fashion a reasonable allocation of parental responsibilities—was also neutral.

¶ 62 Factor eight—the wishes of the child—does not favor relocation because A.M. has

expressed that he does not want to move to Westfield. Factor nine—arrangements for the exercise of parental responsibilities—is neutral and Barclay had not received any proposed parenting schedule from Christine. It was highly unlikely Albert would keep his 50 percent parenting schedule. Factor ten—minimizing the impairment to the parent-child relationship—does not favor relocation in part because of the effect on the parenting schedule.

¶ 63 On cross examination, Barclay indicated that he never thought parenting time or working together would be an issue for Christine and Albert.

¶ 64 6. Albert Muniz

¶ 65 Albert testified that he has lived in the south loop for 21 years. His neighborhood is "fantastic," and he has no concerns about living there. A.M. has never expressed any fears to him about living in the neighborhood.

¶ 66 Other than some medical procedures, Albert explained that he has never missed any of his parenting time with A.M. and that he had cooperated with Christine about parenting time.

¶ 67 He has a close relationship with A.M. and if A.M. moved, it would affect his relationship with A.M. For example, he attends all of A.M.'s soccer and basketball games, and cross-country meets, and it would be inconvenient and impractical to attend these events if A.M. lived in Indiana. A.M. and Albert have a morning routine that includes eating breakfast together and getting ready for school. After school, Albert often meets A.M. at school and walks him back home. After school, they eat a snack together and talk about the day. Moreover, Albert discusses A.M.'s homework and works on it with him. On the weekends they fly kites, do puzzles, play board games, and draw together. Albert regularly takes A.M. to his appointments and that if A.M. moves to Indiana, he would not be able to do so. While A.M. helps him with certain tasks like laundry or cooking, A.M. does not perform any "protective functions." Albert has family in southern Illinois

and attempts to visit his family with A.M. at least once a month. He is worried about the quality of his relationship with A.M. and his ability to be a good father from afar.

¶ 68 Officials from SLES were responsive to emails from Albert and Christine. However, there were inconsistencies regarding the implementation of the 504 plan. A.M. sat near the front of the room, and he was given a reduced load of homework assignments. Although A.M. performed well during the 2015/16 and 2016/17 school years, his performance deteriorated during the 2019/20 school year and was uneven in the fall of 2021. His school performance changed for the worse at the beginning of 2022 and Albert attributed that change to the present legal action.

¶ 69 Related to his research of schools, Albert contacted 10 or 12 schools and held phone interviews with two of the schools that A.M. could attend before high school. He also contacted about a dozen high schools and held two phone interviews. Albert did not investigate any schools in Westfield, Indiana. Despite initially recommending Metropolitan School, Albert changed his opinion because A.M. indicated he wanted to continue to attend SLES.

¶ 70 On cross examination, Albert testified that regardless of the outcome of the proceedings, he expects that he would be able to work together with Christine. For example, Albert has attended various of A.M.'s appointments remotely.

¶ 71 C. Judgment

¶ 72 On August 8, 2022, the circuit court entered an eighteen-page order granting relocation and modifying parenting time. The court considered ten of the eleven factors specified in section 609.2(g) of the Act relating to relocation.

¶ 73 As to the first statutory factor—the reason for the relocation—the circuit court found that Christine's desire to live with her new spouse and to get A.M. "into a better environment, especially in terms of school" are understandable and in good faith. As to the second statutory

factor—the objections to the relocation—the court concluded that Albert's objections were legitimate. The court determined factor three—quality of each parent's relationship with the child—was not at issue as both parents have "displayed a long-standing commitment to exercising parenting time and being highly involved in decision making for their son." The court specifically noted that Christine had traveled between Westfield and Chicago for at least 4 years and had been able to maintain 50/50 parenting time.

¶ 74 The court found that factor four—educational opportunities at both locations—was a significant factor, primarily because A.M.'s current school had failed him and Westfield schools had a "multitude of supports and resources available to A.M.," which weighted heavily in favor of relocation. While the trial court recognized that Albert provided several private schools as alternatives, it found that Albert could not state "whether he thought they would be a viable option for [A.M.] from an admission standpoint."

¶ 75 As to factor five—the presence or absence of extended family at both locations—the court noted that A.M. has close relationships with extended family in southern Illinois and central Michigan, and that Christine could provide transportation to southern Illinois in lieu of Albert driving from Chicago to Westfield and then to southern Illinois. As to factor six—the impact on the child—the court found that while A.M. will have some anxiety during the relocation, the parents are committed to cooperating "to face the challenges presented to and by A.M.." Though Dr. Searcy noted that a transition period would help A.M. adapt to a new location, the court reasoned that A.M. has been aware of this change for a year and has already spent extensive time in Indiana.

¶ 76 In analyzing factor seven—the court's ability to fashion a reasonable allocation of parental responsibilities—the court found that reasonable allocation arrangements are possible if A.M.

relocates, reasoning that it does not see why Christine and Albert's exercise of joint decision-making "cannot continue as always." In considering factor eight—the wishes of the child—the court acknowledged that A.M. is a bright and articulate child, and has expressed that he does not want to move to Westfield because of his affection for and attachment to Albert and because he would lose his ties to current friends, school, and neighborhood. As to factor nine—possible arrangements to exercise parental responsibilities—the court concluded that Christine and Albert are equipped to travel and transport A.M. and that they testified that they would support him through the transition. Lastly, considering factor ten—minimizing the impairment to the parent-child relationship—the court found that both parents understand the importance of A.M.'s relationship with his father and that "[t]he parties have demonstrated the ability and willingness in the past to cooperate with one another."

¶ 77 II. ANALYSIS

¶ 78 A. The Court's Granting of Relocation is not Against the Manifest Weight of the Evidence.

¶ 79 Albert broadly argues that the circuit court's judgment is against the manifest weight of the evidence because the court failed to apply each factor in section 609.2(g) to the evidence and instead focused solely on whether A.M. should remain in SLES. We disagree with Albert's characterization that the circuit court *solely* focused on the quality of education A.M. received at SLES and failed to consider the other enumerated factors. The trial court explained in a written decision its application of each of the factors to the evidence in the record.

¶ 80 A trial court's determination of what is in the best interest of the child should not be reversed unless it is clearly against the manifest weight of the evidence, and it appears that a manifest injustice has occurred. *In re the Marriage of Fatkin*, 2019 IL 123602, ¶ 32. The best

interest determination cannot be reduced to a simple bright-line test and each ruling on the best interests of a child must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case. *Id.* The deference to the trial court's finding in these cases is appropriate because the trial court "had significant opportunity to observe both parents *** and, thus, is able to assess and evaluate their temperament, personalities, and capabilities." *Id.*

¶ 81 Section 609.2(g) of the Illinois Marriage and Dissolution Act states:

"The Court shall modify the parenting plan or allocation judgment in accordance with the child's best interests. The court shall consider the following factors:

(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibility allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences to relocation;

(9) possible arrangement for the exercise of parental responsibilities appropriate to the

parent's resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g).

¶ 82 With respect to the first factor in section 609.2(g) of the Act—the circumstances and reasons for the intended relocation—Albert argues that Christine's only motivation to relocate is so that she can live with her husband and that her desire to relocate A.M. has nothing to do with his best interests. Christine concedes that one of her motivations was to move in with her new husband, but having examined the record we find sufficient evidence of Christine's concern for A.M.'s education to support the trial court's determination that Christine's desire to relocate A.M. was made in good faith. The circuit court's finding is not against the manifest weight of the evidence on the first factor.

¶ 83 As to factor two—reasons for objecting to the relocation—Albert simply repeats the court's finding that his reasons for the objection are legitimate and restates Barclay's finding that this factor did not favor relocation. Albert objects to the relocation for several reasons, including that it would remove A.M. from the only home he has known, A.M would lose his friendships and connection to the community, he believes alternative schools exist in Illinois, the medical care is superior in Illinois, the move might impede A.M.'s social development, and that relocation will have impact on his relationship with A.M.. We do not doubt that these concerns are largely legitimate and made in good faith.

¶ 84 Next, Albert takes issue with the circuit court's finding on factor three—the quality of the parent's relationship—because "the court only focuses on the negative portion of factor three,

which is past failure to exercise parental responsibility." However, the court explicitly acknowledged that this case does not concern past failure to exercise parental responsibility because "[b]oth parents have displayed a long-standing commitment to exercising parenting time and being highly involved in the decision-making." There is no dispute that both Albert and Christine displayed a long-standing commitment to exercising parenting time and were involved in the decision-making process affecting A.M.

¶ 85 Albert next contends that the circuit court misapplied factor four on at least seven bases. We note here that, despite Albert's contention that the circuit court erred by primarily relying on factor four to reach its decision, he admits that testimony regarding factor four "consumed the majority of the testimony at trial." On the merits, Albert first contends that the court misapplied the fourth factor because it concerns educational opportunities and not performance at school. However, a review of the record and the circuit court's ruling shows that the court did not merely consider A.M.'s performance at SLES but also how SLES failed A.M. The circuit court also reviewed the opportunities available at Westfield and Barclay's determination concerning Metropolitan School. Second, Albert argues that Barclay did not investigate the vast majority of the sixteen elementary schools and numerous high schools he suggested. However, Albert: (1) recommended Metropolitan School, (2) backtracked and then recommended that A.M. attend SLES until he finished middle school based on A.M.'s wishes, (3) admitted that he did not want A.M. to attend the local high school, and (4) indicated that he himself had not investigated or visited all of the schools on his list.

¶ 86 Next, Albert contends that the record shows that Barclay did not communicate with any officials from SLES. Albert suggests that without the benefit of Barclay speaking to representatives of SLES, the court could not adduce evidence to support its finding that SLES had

failed A.M.. Despite several attempts, Barclay was not able to speak to anyone from SLES. However, over the course of trial the court heard testimony and admitted evidence indicating that A.M. not only struggled academically at SLES but that the accommodations he received via a 504 plan were either not followed or proved unhelpful. In addition, Barclay had previously visited SLES and was generally familiar with the school from other cases where he represented children as guardian *ad litem*. Moreover, Albert contends that Christine did not investigate any schools in Chicago. Once again, however, Albert's position was that A.M. continue his education at SLES and not attend another school based on A.M.'s wishes. The circuit court additionally concluded that it was unclear if any one of the schools on Albert's list would admit A.M. due to his academic record at SLES.

¶ 87 Further, Albert argues that the circuit court ignored that A.M. had previously performed well at SLES and the testimony of the three SLES staff members. A review of the record and judgment shows that the court discussed the testimony from SLES staff and that there was nothing in the record to suggest A.M.'s performance earlier in his school career would be probative. Moreover, two of the three SLES administrators had little direct involvement with A.M. Albert further contends that the trial court erred by relying on Chris's testimony about his experience at the Westfield schools as a parent of children with learning disabilities and as someone who serves as guardian *ad litem.* However, the circuit court's evaluation of the Westfield schools was not limited to Chris's testimony, but also included Barclay's report and testimony. Lastly, Albert takes issue with why the court would not consider Metropolitan School. Once again, the school was removed from consideration because Albert indicated that he no longer wished to send A.M. there after A.M. said he wanted to continue attending SLES. Despite Albert's assertion that Barclay and Christine did not investigate other schools, ultimately the evidence showed that Christine wanted

A.M. to attend Westfield schools and Albert wanted A.M. to continue to attend SLES. The circuit court's analysis centered on these two options for A.M.; in addition, the circuit court discussed why the private schools initially recommended by Albert were not an option. The circuit court found that the fourth factor relating to educational opportunity weighed heavily in favor of relocation, and we cannot say that the court's finding on this factor was against the manifest weight of the evidence.

¶ 88 Albert nevertheless argues that two cases support his argument that the circuit court's findings on factor four are misguided. In *In re Marriage of Levites*, the appellate court noted that the trial court found that the respondent had not carefully developed evidence to support factor four and that factor was neutral. *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 83. We first note that the *In re Marriage of Levites* court found that "other relocation cases are of limited value for purposes of comparison because the results in each case depends on the unique facts and circumstances of the case." *Id.* ¶ 71. Even if we could glean some limited value from *Levites*, the decision is distinguishable because the trial court there found that the respondent had not developed evidence to support factor four. *Id.* ¶ 83. Here, there is abundant evidence in the record to support the trial court's finding. Moreover, in that case, the court faulted the respondent for not presenting evidence about the educational opportunities at the location to which the respondent sought to relocate. *Id.* Here, on the other hand, there was evidence of the superior educational opportunities in Westfield, Indiana. *In re P.D.*, 2017 IL App (2d) 170355, is equally unhelpful. In that case, the trial court concluded it did not have the evidentiary basis to decide factor four, and the appellate court found no evidence to clearly call for an opposite conclusion. *Id.* ¶ 28. In short, we see no reason to reject the circuit court's finding on factor four relating to educational opportunity for A.M.

¶ 89 As to factor five—absence or presence of extended family at the existing and proposed locations—Albert argues that the court imposed an undue burden on him to accommodate extra travel. The record shows that A.M.'s extended family, and in particular, his grandparents do not live in Chicago. They live in southern Illinois and central Michigan. The circuit court's reasoning on factor five is that A.M. must travel to see extended family and that his move to Indiana does not necessarily complicate the already long-distance travel to see his grandparents.

¶ 90 Albert also takes issue with the circuit court's admission and consideration of Valarie's testimony that A.M. hates school and a move to Westfield would be positive. The court acknowledged that A.M.'s grandmother supports the move to Westfield. However, we note that Valarie was not the only witness who testified that a move to Westfield would benefit A.M.

¶ 91 Albert next argues that the circuit court mischaracterized Dr. Searcy's testimony when it found that A.M. may have anxiety about the relocation when it considered factor six—anticipated impact of the relocation on A.M. The record shows that because A.M. already has anxiety, he will necessarily experience anxiety if he relocates to Indiana. However, as Dr. Searcy opined, the level of anxiety A.M. will experience will depend on his parents. The circuit court's finding on this factor acknowledges A.M.'s anxiety but also discusses evidence in the record that would minimize the potential for anxiety, including parental cooperation and A.M.'s familiarity with the home in Westfield. In addition, Dr. Searcy testified that the day before her testimony, A.M. told her that his anxiety level was "3" out of 10, suggesting that A.M.'s anxiety level about a potential relocation was decreasing.

¶ 92 Albert further contends that the court discounted Dr. Searcy's recommendation of a 90-day transition period. The court indicated that it was aware of the recommendation but that the school year would begin shortly. We read the circuit court's decision to mean that a 90-day transition

period was impractical given the imminent start of the school year. Regardless, the circuit court's finding on this factor appears to be neutral and we cannot say that finding is against the manifest weight of the evidence.

¶ 93 Albert next argues that the court misconstrued factor seven—the trial court's ability to fashion a reasonable allocation of parental responsibilities if relocation occurs— when it stated that "keeping [Albert] abreast of all scheduling appointments, conferences, and extracurricular activities is paramount." However, this statement supports the court's finding that a reasonable allocation of parental responsibilities and arrangements are possible because "[t]here was no reason to believe that their joint decision making on all the major issues cannot continue as always." The record is replete with instances and assurances that Albert and Christine have worked well together in the past and both indicated they can work together in the future, even if A.M. relocates.

¶ 94 As to factor eight—the wishes of A.M—Albert argues that the court ignored A.M.'s wishes. The court clearly considered that A.M. does not want to relocate because of the closeness of his relationship with Albert, his friends, his school, and his neighborhood.

¶ 95 Albert does not challenge the court's finding on factor nine—possible arrangements for the exercise of parental responsibilities appropriate to parental resources and circumstances and development of the child.

¶ 96 Albert claims that the circuit court did not address the critical elements related to factor ten—minimization of impairment of the child's relationship to the parent. Albert asserts that the court ignored the evidence presented at trial indicating that Albert was involved in all aspects of A.M.'s life and that, if A.M. relocated, that would not be the case. However, factor ten assumes the impairment of the relationship and asks whether the impairment can be minimized. The court

reasoned that both parents understand the importance of maintaining the father-son relationship, both parents have demonstrated the ability and willingness to cooperate, and that the parent schedule proposed by the court allows for A.M. to spend time with Albert on long weekends, expanded holidays, school breaks, and most of the summer. Additionally, the court indicated that Albert "should be liberally allowed to spend time with A.M. in Westfield."

¶ 97 We have examined the court's findings as to each statutory factor enumerated in section 609.2(g) and note that "the presumption in favor of the results reached by the trial court is always strong and compelling in this type of case." *In re Fatkin,* 2019 IL 123602, ¶ 32. Our supreme court has admonished us that we are not to reweigh the evidence. *Id.* ¶ 23 n.2. With that in mind and having examined the circuit court's judgment, the record, and Albert's objections to the court's findings, we cannot say that the circuit court's decision to grant the relocation is against the manifest weight of the evidence.

¶ 98 Next, we address two arguments Albert raises separately that are inherently interrelated with our finding above. First, Albert argues, relying on some of the same arguments raised above pertaining to factors one and four, that the circuit court did not properly weigh the factors because most of the factors are either neutral or disfavor relocation. In response, Christine argues that relocation decisions are not decided by who "won" the most factors. "Because of the case-by-case nature of our review, the results cannot be reduced to a simple tally of which party won a majority of the enumerated factors, instead *** some factors in a particular case may weigh more heavily than others[.]" *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 71. Albert is asking us, in part, to reweigh the factors, which as we have discussed we cannot do. *In re Fatkin*, 2019 IL 123602, ¶ 23 n.2. We recognize, however, that at the core of Albert's argument is that it appears that only two factors, the first and the fourth, weigh in favor of relocation. However, a relocation

decision must be based on a qualitative analysis of the statutory factors based on the unique facts and circumstances of each case, not a quantitative one. The circumstances in this case, namely that A.M. has ADHD, OCD, and anxiety, and has suffered academically at his school as borne out by his poor grades, in particular, means that the educational opportunity factor is particularly important in this relocation case. This is not only evident from the weight the circuit court assigned to factor four but from the abundant evidence both parties presented at trial pertaining to educational opportunities. We note that the majority of the testimony introduced at trial pertained to A.M.*'s* education, and, ultimately, even the guardian *ad litem*, who was appointed to represent A.M.'s interests, centered his recommendation on the educational opportunities for A.M.. Thus, we find that the weight the circuit court placed on factor four—educational opportunities—is consistent with the case-by-case analysis the circuit court is required to perform in these cases.

¶ 99 Second, Albert argues that Christine did not meet her burden to prove that the relocation was in A.M.'s best interest. This argument, too, simply asks us to determine that the evidence does not support the circuit court's findings. As we have indicated above, we are not able to conclude that the circuit court's decision is against the manifest weight of the evidence.

¶ 100 B. The Circuit Court's Denial of the Motion for *In Camera* Interview was not Abuse of Discretion

¶ 101 Albert argues that the circuit court abused its discretion when it denied the motion for *in camera* interview because the court is mandated to consider the wishes of the child when considering the factors under section 609.2(g). Albert further argues that by not granting the motion the circuit court "did not hear [A.M.]'s wishes as they relate to relocation, and whether these wishes were reasoned and independent." In response, Christine contends that the record sufficiently established that A.M. did not want to relocate and that he had reasonable explanations

for not wanting to move to Indiana.

¶ 102 We review the court's ruling on an *in camera* interview for abuse of discretion. *In re Marriage of Bates*, 212 Ill. 2d 489, 521-22 (2004). The circuit court denied the motion reasoning that it knew what A.M. wanted and understood his explanation based on the evidence already presented and did not want to subject A.M. to further anxiety. Moreover, the court concluded that an interview with A.M. would not bring any more clarity. We find that the circuit court did not abuse its discretion because its explanation was well reasoned and ultimately the court's finding on the issue of A.M.'s wishes is consistent with what Albert believes A.M. would express to the court.

¶ 103 C. The Circuit Court Did Not Err in Modifying the Parental Schedule

¶ 104 Albert argues that the circuit court erred when it entered a modified parenting schedule because the allocation agreement between the parties requires that Albert and Christine mediate any disagreement and then resolve any remaining disagreement through the court. In response, Christine argues that the circuit court modified the schedule pursuant to statute. We agree.

¶ 105 Section 609.2(g), which provides the relevant factors for the court to consider when deciding a petition for relocation, specifically states that the court "shall modify the parenting plan or allocation judgment[.]" 750 ILCS 5/609.2(g). Moreover, section 609.2(a) specifically establishes that "relocation constitutes change in circumstances for purposes of section 610.5", which, in turn, mandates that the court "modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds *** a substantial change has occurred[.]" 750 ILCS 5/610.5(c). By function of law, when the circuit granted the relocation, it by necessity had to consider modification of the parenting plan, which is expressly contemplated under factors seven and nine. Furthermore, Albert acknowledged that if the relocation was granted,

"there must be some modification to the parenting schedule."

¶ 106 Albert cites to *In re Marriage of Whitehead and Newcomb-Whitehead*, 2018 IL App (5th) 170380, in support of his argument that the circuit court did not consider the relevant factors when it modified the parenting schedule. There, the appellate court affirmed the trial court's allocation of a parenting time despite the trial court not mentioning each specific factor. First, *In re Marriage* is distinguishable because it dealt with an initial parenting plan, not a modification. ¶¶ 1-9. Second, it is distinguishable because "a petitioner's mere assertions that the trial court did not consider the statutory factors is insufficient to overcome the presumption that the trial court knew and followed the law."

¶ 107 Next, Albert alleges that the court erred in terminating his right to first refusal. Under section 602.3, a court can grant the right to first refusal if it "awards parenting time to both parents under sections 602.7 and 602.8." 750 ILCS 5/602.3. Put differently, the right to first refusal is a provision the circuit court considers when it determines an appropriate parenting plan.

¶ 108 Here, the circuit court, in granting a relocation, modified the parenting plan as contemplated by statute. Given that Albert would live approximately three hours away from A.M. and A.M. would have to attend school during the week, it would be impractical to continue to provide Albert with a right to first refusal. We believe the statute contemplates such an order in the context of a relocation, and Albert concedes that there should be a modification (though not a termination) to the right of first refusal. Lastly, the circuit court eliminated the entire section related to the right of first refusal and, thus, the circuit court removed both parent's right of first refusal, not just Albert's right.

¶ 109 Finally, Albert argues that the court implicitly modified the allocation to allow Christine to make education decisions and unilaterally enroll A.M. in her school of choice. The argument is

without merit. The court specifically stated that all other provisions not mentioned in its order "shall remain in full force and effect." Moreover, the circuit court specifically denied Christine's request for sole decision-making, reasoning that it saw "no reason to deviate from the grant of joint decision-making in the original Allocation Judgment." Consequently, Albert's argument that the modification was improper because it was *sua sponte* and without hearing is without merit.

¶ 110 III. CONCLUSION

¶ 111 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 112 Affirmed.