

NOTICE
Decision filed 03/10/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 231280-U

NO. 5-23-1280

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ANDREA M.R.,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 17-D-968
)	
DAVID R.S.,)	Honorable
)	Tameeka L. Purchase,
Respondent-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MCHANEY delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court’s order modifying decision-making responsibilities and parenting time, including a child support order consistent with the parenting time modification, was not contrary to the manifest weight of the evidence, we affirm.

¶ 2 Following the 2017 dissolution of their marriage, Andrea M.R. (Mother) and David R.S. (Father) shared parental decision-making responsibilities and equal parenting time. In February 2022, Mother began filing a series of motions. including petitions for contempt and orders of protection. Father filed a motion to modify parenting time. Following a three-day hearing on all remaining issues, the trial court modified parenting time and parental responsibilities in favor of Mother. For the following reasons, we affirm. We acknowledge that what follows is a lengthy

recitation of the facts but find it necessary to a complete understanding of the required deference given to the trial court.

¶ 3

I. BACKGROUND

¶ 4 The parties were married on April 20, 2013, and had two sons. H.S. was born in November 2014 and A.S. was born in April 2016. Mother and Father divorced in December 2017. On December 28, 2017, the court entered an agreed parenting plan in which Mother and Father had equal parenting time and shared decision-making responsibilities. Their agreement worked until conflicts arose during the COVID-19 pandemic primarily related to the health and recommended medical treatments for A.S.¹

¶ 5 On February 28, 2022, Mother filed several motions: (1) seeking permission to take the children to her sister's wedding; (2) seeking contempt of court against Father because he refused mediation about his request that the children return to in-person school education; and (3) seeking sole responsibility for the children's health decisions. After a hearing on the health decision-making motion, on March 14, 2022, the trial court ordered the parties to follow all recommendations of the children's medical providers, and in a separate order, required the parties to participate in a minimum of four hours of mediation. The decision-making responsibilities and parenting time remained the same.

¶ 6 On March 31, 2022, Father filed an emergency motion asking the court to intervene because Mother was making health decisions without his consultation and potentially without medical recommendations, including mask requirements, medication for allergies he believed had not been diagnosed, and further complaining that Mother had a phone consultation with A.S.'s pediatrician without Father's notification or involvement. After a hearing, the trial court denied

¹A.S. underwent heart surgery for a condition known as congenital atrial septic defect (ASD).

Father's motion on the basis that the allegations did not amount to an emergency and noting that the case was set for a case management conference in July 2022.

¶ 7 Mediator Cheryl Fisher filed her report on May 4, 2022, indicating that the parties participated in over four hours of mediation resulting in a partial agreement regarding the allocation of parental decision-making responsibilities and parenting time. Details of the partial agreement were not included in the report.

¶ 8 On June 28, 2022, Mother filed three more motions. The first was a petition seeking to have Father held in contempt. The second asked the trial court to modify parenting time. The third asked the court to grant her sole decision-making responsibility for the children's health, education, extracurriculars, and religion.

¶ 9 Mother's contempt petition involved the return of the children to in-person learning, enrollment in extracurricular activities, payment of child-related expenses,² Father's alleged violation of the court-ordered communication system, and failure to provide a prescription as ordered by a physician. Regarding the return to in-person learning, Mother attached an email from the children's pediatrician which advised that the children should continue with remote learning unless they wore masks while in school.³ Regarding extracurricular activities, Mother stated that Father signed the children up for t-ball after she had advised him that they were not interested in participating. Additionally, Mother stated that Father failed to pay child-related expenses in a timely fashion. She also alleged that Father violated the court-ordered communication system (an application called Our Family Wizard) by directly texting Mother. Finally, Mother claimed that

²Child-related expenses include items like copayments for medical expenses, prescription expenses, Father's share of health insurance premiums, and any school-related expenses.

³Evidence later revealed that Mother failed to inform the pediatrician that A.S.'s cardiologist had released him to return to in-person learning without restrictions in February 2022.

Father failed to abide by the court's order to follow all medical orders of physicians by not giving one of the boys a prescription.

¶ 10 Mother's motion to modify parenting time alleged that Father did not follow the medical recommendations for A.S. Mother claimed that A.S.'s urologist prescribed a vibrating watch as an aid in urinary frequency training, and Father refused to let A.S. wear it. Father filed a petition to modify "custody" on August 18, 2022, and Mother filed a petition to modify child support on October 20, 2022. On December 6, 2022, the court entered an order directing the parties to have all parenting time exchanges, excluding school, on the Freeburg Police Department parking lot.

¶ 11 On December 8, 2022, Mother filed an emergency motion seeking sole temporary allocation of decision-making responsibilities. She alleged that when A.S. was transported to Children's Hospital in St. Louis due to chest pain, Father yelled while inside the hospital and security was called. When A.S.'s chest pain subsided, Father demanded that A.S. leave the hospital before seeing a physician. During A.S.'s physician visit, Father interrupted repeatedly and accused Mother of being investigated for "Factitious Disorder Imposed on Another." On January 6, 2023, the trial court held a hearing on this motion. The record on appeal contains no transcript of this hearing. The resulting order granted Mother's motion solely as to health decision-making and provided that Father would continue to have full access to the children's medical records and could attend any appointments.

¶ 12 On February 10, 2023, Mother filed a petition for an order of protection against Father for allegedly sending multiple messages to Mother that were "harassing" in nature. She further alleged that Father was sending emails to A.S.'s school including a video in which Father was questioning A.S. Shortly after the video, Mother alleged that when she resumed her parenting time, A.S. was "pale, upset and scared," and Father had not fed or provided him with water. She additionally

alleged that Father also called the pediatrician and made statements about Mother, after which the pediatrician called Mother with concerns about Father's behaviors. The court granted Mother's request for emergency order of protection the same date, which effectively ended Father's parenting time. On February 14, 2023, Father filed a motion to reopen the February 10, 2023, order of protection. After a hearing, the trial court denied Mother's request for a plenary order.

¶ 13 On April 3, 2023, Mother filed another contempt petition against Father for failing to comply with court-ordered discovery, signing up the boys up for t-ball without consulting Mother, and repeatedly failing to timely reimburse Mother for the children's monthly expenses.

¶ 14 On April 10, 2023, Mother filed an emergency petition to modify the parenting plan or alternatively to grant a temporary restraining order against Father. Mother stated that she had just learned that another order of protection had been entered against Father, the terms of which precluded him from being within 500 feet of the school. Mother reported that the school notified her that A.S. was ill and needed to be picked up during Father's parenting time. After speaking with school officials and a Freeburg police officer, Mother entered the school and signed A.S. out, then parked at the Freeburg Police Department, while messaging Father. Upon his arrival at the police station, Father and H.S. went directly into the station and Father asked for a kidnapping charge to be filed against Mother for picking up A.S. from school during his parenting time. No such charge was filed.

¶ 15 Following a hearing on Mother's contempt petition, the court's April 21, 2023, order found that all discovery concerns were resolved, allowed Father to keep the boys participating in t-ball, and allowed Mother to sign the boys up for other extracurricular activities. The court reserved all contempt, sanctions, and attorney fees findings for the final hearing, which was held on May 10, 2023, May 11, 2023, and June 26, 2023.

¶ 16 At the final hearing, Mother testified that she is remarried and lives with her husband, her adult daughter, her stepson, H.S., and A.S. On the date of the hearing, H.S. was eight years old and A.S. was six years old. Pursuant to the parenting plan, she and Father had joint decision-making responsibilities for extracurricular activities. She testified that despite that joint authority, Father unilaterally signed up both boys for t-ball in 2022 and 2023. She testified that for Christmas in 2021, she purchased the boys baseball-related items, took them to watch professional baseball games, and attempted to get them to use their new equipment. However, both were adamant that they did not want to play t-ball. Instead, they were interested in swimming. Mother testified about a written exchange she had with Father about t-ball when she advised that since both boys had indicated a lack of interest in t-ball, she did not plan on forcing them to play. Six days later, Father emailed Mother stating that he had signed the boys up for t-ball, that he was the coach, and invited her and/or her husband to participate as coaches.

¶ 17 Mother next testified about A.S.'s December 2021 open-heart surgery and how he was engaged in remote learning pursuant to a section 504 plan.⁴ She testified that Father unilaterally sent A.S. back to in-person learning. Mother testified that the plan was to keep A.S. and H.S. at home with remote learning until they were both fully vaccinated against COVID-19. A.S.'s cardiac team had not released him to have a second vaccine. Mother testified that she received an email from Father on February 13, 2022, indicating that he was taking both boys to school the following morning. Mother told Father that she did not agree and testified that on February 16, 2022, A.S.'s

⁴A 504 plan is an educational plan for students that outlines accommodations and support that a school will provide for a student with a disability to ensure the student has equal access to education. It is based on section 504 of the Rehabilitation Act of 1973, a federal civil rights law protecting individuals with disabilities. 29 U.S.C. § 794 (2018); see also 45 C.F.R. 84 *et seq.* (2024) (implementing section 504 of the Rehabilitation Act of 1973).

cardiologist recommended against A.S. getting the second COVID vaccine because of his adverse reaction to the first vaccine and released A.S. to return to in-person education without restrictions.

¶ 18 Mother testified about Father's failure to consistently reimburse her for monthly expenses for the children, and frequently texting her outside of the March 14, 2022, court-ordered communication vehicle, the Our Family Wizard application. She identified exhibits of these expenses and multiple follow-up messages she sent Father through the court-authorized communication device as well as photocopies of all text messages she received through the date she filed her latest contempt petition.

¶ 19 Mother next testified about Father's unwillingness to participate in prescribed medical treatments. A.S.'s medical issues included a dermatological condition on his arms and his ongoing frequency with urination. The pediatrician prescribed an oral medication. During Father's parenting time, the pediatrician sent the prescription to the pharmacy, but Father did not pick it up. Mother testified that instead Father contacted the cardiologist to ascertain if taking this medication was appropriate. The cardiologist advised Father that she was aware of the prescribed medication and had agreed that A.S. could take it. Father continued to send the cardiologist additional questions about the appropriateness of this medication and failed to administer it to A.S. Upon picking up the boys from Father's home, Mother had the prescription filled and A.S.'s skin condition improved.

¶ 20 Mother also testified about Father's resistance to use of the "watch" that A.S.'s urologist recommended to help train A.S.'s bladder. The urologist diagnosed A.S. with overactive bladder, and the watch was designed to help A.S. extend the time between voids. Father refused to allow A.S. to wear the watch during his parenting time, and informed Mother that she would not be getting the watch back. Because Father refused to follow the urologist's suggested protocol, any

advances made during Mother's parenting time reversed during Father's parenting time, and thus, overall, Mother testified that A.S. had not advanced as he should have. Mother reviewed statements made by Father in the Our Family Wizard application in which he stated that A.S. was able to go long intervals of time without using the watch. Father stated that A.S. wore the watch in his home, but that he did not need to use it. Mother testified that there were multiple occasions when A.S. would return to her home from Father's home without the watch.

¶ 21 Finally, Mother testified that Father used a parenting time "right of first refusal" improperly and engaged Freeburg police officers to remove the children from her home. Mother explained that use of the "right of first refusal" allowed the other parent to take the children to his or her home if the parent with parenting time was unavailable throughout the evening into the next day. In this instance, Mother was in the process of being discharged from a Missouri hospital emergency room and notified Father that she was on her way home. Father then had Freeburg police assist with the removal of the children from Mother's home where they were being watched by their stepfather. Upon her arrival home, Mother contacted the Freeburg police and retrieved the children.

¶ 22 Mother asked the court to give her sole decision-making authority for health, education, extracurricular activities, and religion. She testified that it had become abundantly clear that she and Father could no longer share those responsibilities.

¶ 23 The health category had already been temporarily allocated solely to Mother as of January 9, 2023, after a hearing in front of Judge Patrick R. Foley. The main reason Mother was seeking permanent health responsibility related to Father's failure to show up for certain medical appointments. Recently, Father failed to bring both boys to their dentist's office, which resulted in the assessment of no-show fees. Mother had placed the dental appointment on the Our Family

Wizard calendar. Mother also took issue with Father's failure to attend A.S.'s gastroenterology appointment and later diagnostic procedures ordered by the gastroenterologist at Children's Hospital. Recently, Father also missed A.S.'s ophthalmology appointment at Children's Hospital that she placed on the Our Family Wizard calendar.

¶ 24 Mother testified that due to recommendations of medical providers, she began looking for a psychological counselor for both boys. A.S.'s pediatric physicians recommended counseling because children who have had heart surgery sometimes experience a form of post-traumatic stress disorder. Other physicians recommended counseling because Father would get angry and argue with them and with Mother in A.S.'s presence. She messaged Father on Our Family Wizard in May 2022 to tell him that she planned to find a counselor for the boys. Mother started with Children's Project Safety Net in her efforts to find a counselor who had availability during COVID and was willing to work with children as young as H.S. and A.S. Counselor Julie Weber (Weber) was recommended to Mother. The boys had their first appointment in March 2023. Both parents attended the first session. Father did not complete the intake paperwork, and failed to show for future appointments, which Mother calendared in Our Family Wizard.

¶ 25 Mother next testified that she recently received a phone call from the school asking her to come to the school because A.S. had an eye condition. However, that school day was during Father's parenting time. She sent Father a message to tell him and offered to pick up A.S. because there was an order of protection barring Father from being on school property. After calling local police for advice, she followed their instructions, picked up A.S., and drove to the police station parking lot to wait for Father. Mother messaged Father and advised that she was going to have a tele-doc appointment for A.S. from inside her vehicle. The tele-doc provider diagnosed A.S. with pink eye and sent a prescription to the pharmacy. Mother conveyed this information to Father who

did not respond. Mother then reached out to Father's mother and sister. Father eventually arrived at the police station and hurriedly ran into the police station with H.S. Mother called the station, and the employee who answered the phone asked Mother to confirm that she and A.S. were still outside the police station on the parking lot. Father asked that Mother be charged with kidnapping A.S. because she picked him up from school during Father's parenting time.

¶ 26 Mother then testified that A.S. was seen by the Washington University pediatric epilepsy center in December 2022. Father was present at this appointment. Mother confirmed the doctor's note that the parents cannot agree on a course of medical care for A.S. Most recently A.S. had a wart on his finger. The pediatrician recommended sanding the wart down and applying a topical over-the-counter treatment daily. While Mother continued to comply with the pediatrician's directions, A.S. informed her that Father was not treating his finger. The pediatrician had discussed this wart treatment during A.S.'s annual pediatric examination which Father attended.

¶ 27 Mother also testified that A.S.'s ophthalmologist prescribed a magnesium supplement in December 2022 to help A.S. with his vision and with headaches. He takes two chewable tablets at bedtime but only receives them when in Mother's care. She testified that Father said at the January 2023 hearing that he was not giving the magnesium to A.S. during his parenting time.

¶ 28 Mother also testified about a situation on March 30, 2023, when she video-messaged with the boys who were then with Father. A.S. was visibly crying. Father called A.S. a liar; Father attempted to get H.S. to agree that A.S. was a liar; and then Mother heard someone state that A.S. had not attended school that day. Mother checked the school's attendance website and confirmed that A.S. had missed school. Father had not conveyed that information to Mother and had also not informed Mother that A.S. vomited multiple times over the preceding weekend.

¶ 29 Mother testified about the counseling sessions the boys had with Weber and confirmed aspects of Weber's notes. Weber's notes from the first appointment in March 2023 involved asking the boys about their emotions. A.S. was asked about what made him sad: "Dad *** when he screams/gets angry, he gets angry very easily when one person was bullying me." A.S. indicated the following about what makes him scared: "The dark, nightmares, if he thinks mom is getting mad, if I think dad is going to yell, that I will get dad germs. He does not wear a mask when he does not know people." A.S. indicated that he gets worried about the following: "Dad. He is going to scream at me." H.S. was asked about the same emotions. H.S. indicated that he gets worried as follows: "Going to my dad's house because he always gets mad and screams at us." H.S. is angry as follows: "When my dad gets mad at me and screams at me. He did not scream for two days and it felt so nice." From the April 6, 2023, note, A.S. advised Weber that his dad was a liar and had told him that counseling was pointless. On April 19, 2023, H.S. stated that his dad was telling multiple lies, is always "dramatic" about everything, and is making him play baseball even though H.S. said that he did not want to. Finally, H.S. stated that if he could change anything, he would only live with his mom because she does not yell or get mad at him.

¶ 30 Mother then testified about extracurriculars decision-making responsibility. She testified that despite the fact that the boys told Father they did not want to play t-ball, he unilaterally signed them up. The boys had interests in other extracurriculars. Both boys took private swim lessons, which did not conflict with t-ball. A.S. wanted to go to a ninja sports camp the upcoming summer. H.S. wanted to participate on the community swim team, but practices and meets conflicted with t-ball. Mother asked Father to allow her to sign both boys up for swim team. When Father failed to respond, Mother did not sign them up.

¶ 31 Mother next testified about education decision-making responsibility. As of that date A.S. was in first grade and H.S. was in second grade. Both before and after A.S.'s heart surgery, the boys were quarantined in her house where they did their assigned schoolwork. Mother testified about different tasks that she would do with A.S. on her days, but when Father took over, the assignment sheet would not have indications that he had done the required work with A.S. Multiple times, Mother would message Father about the whereabouts of the sheet when A.S. would arrive at her house without it. Mother would then have to get duplicate copies from the school. Father missed A.S.'s kindergarten graduation and blamed Mother because she failed to calendar it on the Our Family Wizard. Mother explained that the calendar was intended only for appointments that either she or Father scheduled for the children. Mother testified that the teacher provided two copies of the classroom announcements in A.S.'s folder. She would pull her announcements out and then send the folder containing Father's announcements back to Father. Mother then testified about a Freeburg school talent show that the boys wanted to attend on April 4, 2023, which was during Father's parenting time. The boys were unable to attend because an order of protection barred Father entering school property.

¶ 32 Mother then testified about her request that the court award her sole decision-making responsibility for religion. She testified that she and her family were very active in their church, and when the boys are with her, they always attend. When in Father's care, the boys do not go to church except for the Sunday preceding this court hearing, and the Sunday prior to A.S.'s open-heart surgery when both boys were baptized.

¶ 33 Mother next testified about her request to modify parenting time. Since December 2017, Mother and Father shared parenting time equally. She testified that awarding her most of the parenting time was in the boys' best interest. She stated that Father does not follow through with

prescribed medical treatments, does not do required homework and practice, has anger issues, and is mentally and verbally abusive. She testified that during her marriage to Father he was physically abusive. Mother testified that she only contacted the police one time during the marriage about the physical abuse because she was afraid of Father. She stated that she feared that Father could eventually become physically abusive to the boys. Mother stated that oftentimes the boys do not want to go to their Father's home and express their fear. She asked the court to allow Father to have the children one night a week and one weekend per month. She also asked for statutory child support.

¶ 34 When asked about her employment, Mother testified that she works from home but has flexible hours. At times she may work on weekends but always does so when the children are asleep. Twice in the last 10 years she had to travel out of town to meet with a client and was gone for approximately 2 days on each trip. She testified that she no longer travels for work. She has worked in sales for this company for 20 years, and while she is eligible to retire, she has no current plans to do so.

¶ 35 Mother was asked about A.S.'s 504 education plan that included H.S. At one point, the Freeburg school was ready for the boys to return to in-person instruction based on the cardiologist's note releasing A.S. to in-person instruction and activities. Mother testified that Father wanted the 504 plan to end, while she wanted it to continue. Mother's concern was that A.S. was not fully vaccinated for COVID-19, having only had the first vaccine. She testified that the terminology in the 504 plan requiring A.S. to be fully vaccinated before returning to school meant the COVID vaccine, and not other Illinois-mandated vaccines for attendance. Mother testified that the current 504 plan contains no vaccination requirements.

¶ 36 Mother admitted that although she notified Father about counseling services for the boys, she made the decision without Father's approval. She believed she had the right to put the boys in psychological counseling because she had temporary sole health decision-making responsibility. During the intake appointment, A.S. indicated his anxiety about not wearing a mask. Mother testified that she gives A.S. a choice each day on whether he wants to wear the mask and stated that A.S. believes that his heart issue was caused by germs.

¶ 37 Father testified that his construction business grossed approximately \$416,000, and after taxes and expenses, his 2022 take-home income was approximately \$80,000. He testified that about one-third of his work time can be completed from home. He testified that money had been tight because he was not able to work as much because of time constraints caused by the court's entry of two orders of protection against him, required court appearances, and time spent producing documents needed for this litigation. Additionally, he had a work-related injury in the fall of 2022 that took six to eight weeks to heal. During that time, he was unable to do his final walk-throughs on completed jobs, which delayed payments, and he was unable to line up new construction jobs.

¶ 38 Father testified that he attended all school open houses and meetings with his children's teachers. He stated that initially, he and Mother attended the meetings together, but now they have separate appointments because of their differences. He serves on two school committees and the preschool/daycare board and recently ran for the primary school board. On the days that Father has the children he only works until the school day ends. If he is unable to pick up the boys from school, his mother picks them up. Upon arrival home, the boys eat a snack and then must do their homework. Father testified that he works with the boys on their homework and disputed Mother's testimony that he did not do A.S.'s reading fluency homework. Father indicated that A.S. had missed 15 to 20 days of school that year with more than half of the absences due to medical

appointments. He testified about the 2021-dated 504 plan and confirmed that the section indicating that the boys could return to in-person instruction after being fully vaccinated, meant that they needed to receive COVID vaccines.

¶ 39 Father also testified that A.S.'s cardiologist released him for in-person learning in January 2022—not in January 2023 as Mother testified. Because A.S. was medically cleared, Father requested that the boys no longer wear masks when they returned to school in September 2022. In discussing the issue with H.S., Father learned that H.S. was concerned that if he got sick, H.S. could make A.S. sick. On the days that he had the boys, they wore masks. Father testified that he never provided the boys with masks starting with the 2022-2023 school year. During the summer of 2022, Father learned that the pediatrician's recommendation that A.S. continue to wear a mask during the 2022-2023 school year was based upon the erroneous assumption that A.S. had not been cleared by his cardiologist. Father then provided the clearance letter to the pediatrician, who then modified his masking position because A.S. was not at any greater risk of contracting COVID. Father unsuccessfully attempted to get Mother to agree that the boys did not need to wear masks at school. Father then contacted the school to see if the 504 plan could be modified so that the boys would not have to wear masks.

¶ 40 Father testified about the urology watch prescribed for A.S. He explained that because of the heart surgery, A.S. was on a diuretic, which caused more frequent urination. Father acknowledged that he quit using the watch after approximately three months when "he was cured from his urological infrequency [*sic*]." Father admitted that on occasion when he had the boys and they were running late to school, A.S. would leave the house without the watch. However, he testified that Mother always got the watch back. Father identified photos of A.S. taken by Mother that showed that he was not wearing the watch over Christmas break 2022 when at Mother's house.

¶ 41 Father next testified about his concern regarding a dermatological prescription for A.S.'s arms because of a listed warning not to use the medication if the patient had congenital heart disease. He had requested that they wait to give A.S. the medication until he had an opportunity to discuss his concerns with the physician. He also testified about his concern that Mother was treating the boys with over-the-counter medications for undiagnosed allergies.

¶ 42 Father also did not believe that A.S. needed to see a neurologist for migraines, as he opined that the child's two headaches were due to heat, not getting enough sleep, and eating food that was not nutritious. He testified that A.S.'s two primary physicians did not believe that he needed to see a neurologist, but Mother "manipulated" a third physician, an endocrinologist, to make the referral.

¶ 43 He testified that he stopped going to A.S.'s medical appointments after Mother got temporary sole health decision-making power because his presence only irritated Mother and resulted in "drama," which he wanted to minimize for A.S. Father also testified that Mother had contacted the police 20 times over the last few years for assistance in the turnover of the children.

¶ 44 Father next testified about the extracurricular t-ball activity. He stated that both boys were excited to play in 2022, and that during the season, they seemed to have "the best time of their life [*sic*]." At no time during the 2022 season did either boy indicate that he disliked t-ball. After signing the boys up for t-ball in 2023, and Mother advising him that A.S. would not be at his first practice as he did not want to play, Father testified that he never had any difficulty getting A.S. to practice and play t-ball in 2023. As of the date of the hearing, A.S. had been to one 2023 t-ball practice and he actively participated. Father testified about photos taken during practice and after games in which the boys looked happy. In addition, Father testified about a craft project that H.S. brought home that included a list of things that H.S. wanted to do when he grew up. H.S. wrote that he hoped to start a t-ball team.

¶ 45 On the third hearing date, the trial court began with Mother's request for a plenary order of protection. Mother filed and received an emergency order of protection against Father on May 26, 2023, after the first two final hearing dates. Mother testified that the previous weekend the boys had been with Father. She testified that the pediatrician diagnosed A.S. with allergies and prescribed over-the-counter medication and emphasized the importance of consistency between the two households. When the boys returned to Mother's home on May 22, 2023, A.S. had allergy symptoms. Mother started A.S. with the antihistamine, Claritin, but after a couple of days, she added a nasal antihistamine spray, Flonase. When the symptoms started to worsen, Mother made an appointment for A.S. with the pediatrician. At the pediatrician's office, Mother reported A.S.'s symptoms as a cough. The rapid strep test was negative. After A.S. was seen, he was prescribed prednisone and directed to continue with Claritin and Flonase. However, the aftercare note did not reference Claritin and Flonase. A.S. went home with Father. Mother called the pediatrician's office for clarification and the office confirmed that A.S. needed to continue with the two over-the-counter medications. Mother then sent Father a note in Our Family Wizard to advise of the update to the pediatrician's orders. Father disputed Mother's information because the aftercare order omitted both medications.

¶ 46 The next day, Mother went into the school to see A.S. and testified that he looked terrible. After A.S. went home with Father, Mother alleged that she attempted to reach A.S. for 4.5 hours. When she finally got through via a video call, he sounded like his cough was getting worse and that he was struggling to breathe. A.S. told her that he was not getting his medicine and that he was not being given water. She also spoke with H.S. who typed her a message that he was very sad. Throughout her conversations with both boys, Father was yelling in the background. Father stated that A.S. did not need his medications, and he did not need water. Father took the phone

away from both boys shortly after Mother began speaking with each of them. The next morning, Mother called again, and A.S. answered. Again, Mother believed that he was extremely ill. Then H.S. got onto the call, whispered to Mother that he could not talk, and then typed in a predetermined “safe word” that was selected during his therapy sessions with Weber. At the end of the call, Mother made the determination that she had to seek the emergency order of protection. Upon receipt of the order, she returned to Father’s house with the police and then took A.S. straight to the pediatrician. The pediatrician diagnosed A.S. with an ear infection and prescribed an antibiotic. Mother then confirmed that the boys’ counselor, Weber, recommended that Father have supervised visitation for the next two months considering the fear that the children recently experienced in his home and their statements about demonstrations of Father’s anger. Mother asked the court to grant a plenary order of protection and order Father to engage in supervised visitation.

¶ 47 On cross-examination, Mother confirmed that after A.S. was treated for his infection, the family went on a camping trip that weekend, which was something she had planned for months in advance. The boys knew about the camping trip, and although they were scheduled to be with Father on that Memorial Day weekend, they asked him if they could go on the camping trip. Mother testified that she told the boys she would take them camping on an alternate weekend.

¶ 48 Mother testified that when the boys were creating safe words during a counseling session, she was brought in to know what words could be used if the boys were in a situation where they felt unsafe. Mother testified that she first met Weber when she was searching for a counselor for the boys. She acknowledged that Weber attends the same church that she does but stated that Weber attends a different service. Mother denied telling the children what to say at their

appointments and stated that she had only stayed for the entire appointment with the boys on a couple of occasions.

¶ 49 The next person to testify regarding the plenary order of protection was Mother's husband, Ryan B. (Ryan). Ryan testified that he was present while Mother was video messaging with her two sons on May 25, 2023. He was able to hear and see the conversation as it occurred. He testified that A.S. was gasping for breath and coughing. Ryan confirmed that A.S. told Mother that Father did not give him any medication, and when Mother told A.S. to take a drink of water, A.S. stated that he did not have any. Ryan also testified that he heard Father in the background stating that A.S. did not need medication or water. Ryan also witnessed the video message with H.S., who was in his bed under the covers, had been crying, and was messaging Mother that he was sad, and did not want to speak. Stating that these were not normal conversations, Ryan testified that he had concerns for the welfare of both boys. Upon retrieving them from Father after the court entered the emergency order, A.S. was still coughing and gasping for air. Both boys showed significant improvement within the day after receiving their medications. He confirmed that Mother told both boys that Memorial Day was not her weekend and so the boys would not be able to go camping with them.

¶ 50 Father next testified that he and Mother provided the boys with Benadryl for postnasal drip since they were about two years of age. While Mother made the pediatrician appointment for A.S., Father took him for the appointment. Prednisone was prescribed and he picked it up at the pharmacy. During this appointment, he discussed the use of Benadryl with the physician. He testified that by the time that the police took the boys pursuant to the order of protection on May 26, 2023, he had already given A.S. five of the six doses of prednisone, and his cough was cleared up.

¶ 51 Father also testified he attended church at the United Church of Christ in Freeburg where Weber and her husband were members. He had never talked to her before but just saw her at church. While he attended the first intake counseling session with Mother and the boys, he had not returned, and Weber had not contacted him or asked him to attend and/or provide information.

¶ 52 Since the entry of the emergency order of protection, Father had not seen the boys in 31 days. He testified that he believed the boys were manipulated by Mother. He said that Mother's allegation that he had not provided medication or water to the boys was false. Father testified that he had informed Mother that he provided medication to A.S. but then stated that he had not told her either in writing in Our Family Wizard or over the phone as he does not "give just random information over the phone." Father denied saying that A.S. did not need medication or water when Mother was speaking to the boys on May 25, 2023. Father denied taking the phone from A.S. and denied being abusive towards the boys or yelling at them on May 24, 2023, and May 25, 2023.

¶ 53 Father testified that at the first counseling session, when the subject of him yelling at the boys came up, he indicated that the boys tend to exaggerate. He explained that if he tells them something that they do not want to hear, they categorize the tone of that conversation as yelling. He stated that the boys are now at an age when they use manipulation. He said that H.S. tends to avoid conflict, but that A.S. can be manipulative.

¶ 54 On cross-examination, Father testified that Mother never told him about the counseling sessions for the boys and was then asked to review Mother's messages to him which were sent after every appointment. Father confirmed that H.S. was honest. He then reviewed the counselor's notes which stated that both boys informed Weber that they did not feel safe with their dad. Father testified that he had never yelled at his children but had raised his voice.

¶ 55 Father agreed that he and Mother had no ability to share decision-making responsibilities. Father testified that Mother construes any compromise as a defeat. He expressed his concerns that Mother was involving the children in their issues and stated that the boys were too young to comprehend these matters.

¶ 56 Father asked the court for most of the parenting time, with the same holiday and alternate weekend schedule, but with Mother receiving one day of parenting time per week. On decision-making, he asked the court to award him sole authority with all four categories.

¶ 57 On cross-examination, Father was asked about his Facebook post indicating that he would be running for a Freeburg primary school board position. In response, another parent, Amber Lonsdale, indicated that she was not happy that Father engaged in an outburst in front of a child at the last school board meeting where he stated something to the effect that the current board members “were blowing smoke up their ass” and then “stormed” out of the meeting. Another parent, Emily Vasquez, noted that she also saw Father’s outburst and that she did not think that someone who could not control himself in public should serve on the school board.

¶ 58 Father testified that he had not yet provided his attorney with the completed fluency checklists for A.S. to confirm that he had assisted A.S. with these homework assignments. He also stated that he had not received any information from the teacher regarding A.S.’s kindergarten graduation ceremony. Father agreed that he signed the boys up for t-ball for 2023 without Mother’s express permission, but insisted that they both wanted to play.

¶ 59 Father testified that his business was not doing well. He disputed the need to work additional hours, stating that once the court situation was concluded, that would free up time. He agreed that if the court ordered supervised visits, his sister would work as the supervisor. Father stated that he did not know if he had discussed t-ball with Mother before he signed the boys up.

¶ 60 At the conclusion of the testimony, the trial court ruled from the bench regarding Mother’s request for a plenary order of protection. The court stated that Mother failed to meet her burden of proof that a plenary order was necessary, noting that the case involved seasonal allergies and an upper respiratory infection, and was particularly displeased that when the child healed so quickly, the order remained in place precluding Father from seeing the children. The trial court referred to the situation as an “overreach” and ordered parenting time with Father to immediately resume and ruled that she would grant Father make-up parenting time.

¶ 61 On August 25, 2023, the trial court entered a 20-page order ruling on all outstanding issues. The court found Mother to be more credible than Father. The court found that Father struggled to explain inconsistencies in his written discovery responses, his late payments for child-related expenses, and his failure to produce discovery documents establishing the completion of A.S.’s reading fluency homework. The court also noted that because Father chose not to attend any counseling sessions after the initial appointment, he had no way to dispute the contents of the counseling records.

¶ 62 The court noted that the parties agreed that they cannot share joint decision-making authority, and that because of the 504 plan, whoever was granted sole health decision-making authority must also be granted sole educational decision-making authority, as the two were intertwined. The court found that there had been a substantial change in circumstances in that the parties could no longer share decision-making responsibilities for the children regarding health, education, and extracurricular activities. 750 ILCS 5/610.5(c) (West 2022). The court indicated that to make these decisions, it was required to consider the best interests of the minor children by evaluating the statutory factors contained within the Illinois Marriage and Dissolution of Marriage Act *Id.* The court stated that it gave substantial weight to the records of counselor Weber where

the boys had told her that they were sad, scared, and worried when spending parenting time with Father.

¶ 63 The children were acknowledged to be well-adjusted to both parents' homes, were doing well in school, had an established routine in Mother's home, and were not completing all homework when at Father's home. The court stated that while Mother used the Our Parenting Wizard application to communicate with Father about every medical appointment, and other issues, Father only responded if he disagreed with Mother. The parties were at odds over the necessity for all medical care. The court noted that there was no question that Father did not consult with Mother prior to signing the boys up for t-ball in 2023.

¶ 64 The court stated that neither party was willing to facilitate a close relationship between the children and the other parent. In support, the court noted the numerous requests Mother made for orders of protection, repeated police involvement, and Father's attempt to have Mother charged with kidnapping in the presence of the children. The court stated that the parties had the ability to facilitate these relationships and that both parents needed to improve for the welfare of the boys.

¶ 65 While there had been no reports of physical abuse, the court expressed concern about the allegations of emotional abuse against Father. Those allegations were supported by the counselor's notes upon speaking with the boys who claimed to feel unsafe with Father.

¶ 66 The court granted Mother sole decision-making responsibility for health, education, and extracurricular activities, and maintained the joint responsibility for religion. The court noted that it was in the best interests of the boys for the parents to not speak ill of each other in their presence. The court ordered Mother to keep Father completely updated with the Our Family Wizard application regarding all health, education, and extracurricular activities.

¶ 67 The court found that there had also been a substantial change in circumstances warranting a modification in parenting time. The court considered all relevant factors including those listed in section 602.7(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602.7(b) (West 2022)). Noting that the boys did not testify, the court referred to the counselor’s notes that the boys expressed a desire to spend more time with Mother. The court found that based upon the testimony, and after assessing the credibility of the witnesses, it believed that Mother “does everything she can to place the needs of the children ahead of her own needs, while it appeared to the Court that [Father] often placed his need or desire to prove [Mother] wrong over the needs of the minor children.” The court listed examples: (1) Father not attending the counseling sessions because he did not believe counseling was necessary; (2) Father signing the boys up for t-ball in 2023 even though both boys told him they did not want to play t-ball; and (3) Father not fully complying with the prescribed urology watch for A.S.

¶ 68 The court awarded the majority of parenting time to Mother. Father was allowed parenting time during the school year on Tuesdays after school until 7 p.m. on Tuesday and every other weekend from Friday after school until Monday morning. During summer break, the parents would alternate weeks of parenting time. The court also entered a monthly child support award of \$813.19 based on Father’s reported income in his financial affidavit.

¶ 69 On October 31, 2023, the court held a hearing on Father’s motion to reconsider and the make-up parenting time Father was owed after Mother’s request for a plenary order was denied. The court awarded Father 15 days of make-up parenting time and denied his motion to reconsider. On December 8, 2023, Father timely filed his notice of appeal from the August 25, 2023, parenting order, and the November 14, 2023, order denying his motion to reconsider.

¶ 70

II. ANALYSIS

¶ 71 On appeal, Father argues that the trial court erred in modifying parental responsibilities and parenting time in Mother's favor, which resulted in a determination that he was obligated to pay child support.

¶ 72 Section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) sets forth the requirements for modification of orders allocating parental decision-making responsibilities and parenting time. 750 ILCS 5/610.5(c) (West 2022). Specifically, that section provides:

“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.” *Id.*

Accordingly, the court may modify the allocation of parental decision-making responsibilities and/or parenting time if a substantial change has occurred in the circumstances of the children or either parent since the existing judgment was entered and such a modification is necessary to serve the children's best interests. *In re Marriage of Virgin*, 2021 IL App (3d) 190650, ¶ 43.

¶ 73 The trial court's decision regarding whether to modify the allocation of parental decision-making authority and/or parenting time is subject to a manifest weight of the evidence standard of review. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004); *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 56. This decision is afforded great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the children's best interests. *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. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 74 A. Decision-Making Responsibilities

¶ 75 Here, the evidence overwhelmingly supports the trial court's conclusion that there had been a substantial change of circumstances necessitating the modification of both decision-making responsibilities and parenting time. 750 ILCS 5/610.5(c) (West 2022). After the court finds that there has been a substantial change of circumstances, it must consider the following best-interest factors from section 602.5(c) of the Act: (1) the children's wishes; (2) the children's adjustment to home, school, and community; (3) the mental and physical health of all individuals involved; (4) the parents' ability to cooperate on decisions; (5) the level of each parent's participation in past significant decision-making; (6) any prior agreement between the parents regarding decision making; (7) the parents' wishes; (8) the children's needs; (9) the distance between the parents' residences; (10) whether a restriction on decision-making is appropriate; (11) the willingness and ability of each parent to facilitate and encourage a relationship between the minor children and the other parent; (12) the physical violence or threat of physical violence directed against the children; (13) the occurrence of abuse against the children or other member of the children's household; (14) whether one parent is a sex offender or resides with a sex offender; and (15) any other factor that the court expressly finds to be relevant. *Id.* § 602.5(c).

¶ 76 The trial court's detailed written order confirmed its painstaking efforts to thoroughly consider and weigh each statutory factor based upon the evidence presented and assessing the credibility of the parties and witnesses. We acknowledge that this was a close case. *Both* parents engaged in reprehensible behavior that was contra to the children's best interests. The court

chastised both parents for failing to facilitate a close relationship between their children and the other parent and repeatedly stressed that the situation needed to improve:

“[I]t is apparent to the Court that neither parent has a strong willingness to facilitate and encourage a close and continuing relationship between the other parent and the child. *** The police have been involved between the parties on a number of occasions. Petitioner has filed multiple petitions for Orders of Protections against Respondent. Respondent attempted to press charges against Petitioner for kidnapping in front of one of the minor children.

*** Neither parent has an exemplary track record, and both must improve for the welfare of the minor children. The constant turmoil displayed between the parties has been emotionally difficult for the minor children as evidenced by the counselling records.”

The court went on to state: “The Court further finds it is in the best interests of the minor children that neither parent shall discuss the other parent or parental-related issues with the minor children except in a laudatory manner. Both parents shall be enjoined from speaking ill of the other parent to the minor children or within earshot of the minor children.”

¶ 77 These statements reflect a common frustration shared by all family law judges who continually witness that when parents wage war on each other, their children are *always* collateral damage. To that end, a strong argument can be made that the statutory best interest factor entitled to the most weight is the willingness of a parent to facilitate and encourage a close and continuing relationship between the other parent and the child.⁵

⁵Perhaps this damage could be minimized if a mechanism, other than contempt, were developed to force divorcing parents to comply with a Children’s Bill of Rights. The not-for-profit organization, Child Centered Solutions, <https://childcenteredsolutions.org/mission-statement> created a Children’s Bill of Rights:

¶ 78 The trial court found that Mother’s testimony was more credible, noting that Father could not explain inconsistencies in discovery responses, his consistent failure to timely reimburse Mother for the children’s monthly expenses, and his failure to produce the documentation he claimed established that he completed reading fluency homework with A.S. The court also noted that because Father chose not to attend any of the boys’ counseling sessions—even though he had notification of all appointments—he had no ability to dispute what counselor Weber stated in her notes.

¶ 79 The trial court found that the counseling records—where both boys shared their fear, sadness, and worry about spending parenting time with Father—were entitled to substantial weight. *Id.* The trial court emphasized that Mother sought to follow the medical guidance provided by physicians while Father questioned virtually all recommended care. Mother communicated with Father as directed by the court through Our Family Wizard and calendared all medical appointments. Father routinely did not respond to these messages unless he disagreed with Mother. Father also missed multiple medical appointments. The trial court had concern about the potential

-
1. The right not to be asked to ‘choose sides’ between my Mom and Dad.
 2. The right to express, or not express, my feelings.
 3. The right to have a unique relationship with each of my parents without the other making me feel guilty about it.
 4. The right to freely and privately communicate with both my Mom and Dad, and not to be asked questions by either parent about the other.
 5. The right to be treated as a person and not as a pawn, possession or negotiating chip.
 6. The right not to be expected to be a spy or messenger.
 7. The right not to hear either Mom or Dad say bad things about the other.
 8. The right to have my life change as little as possible while my Mom and Dad work out their problems.
 9. The right to have my own life and remain a child.
 10. The right to expect you to be my parents, not my friend.
 11. The right not to be expected to be my parents confidante or companion.
 12. The right to have what is in my best interest protected at all times.”

<https://static1.squarespace.com/static/57990942725e25f85fd61892/t/5cc8940a5642820001cfd68/1556648970608/BillofRights.pdf>

emotional abuse sustained by the boys when they had parenting time with Father, especially given their statements to Weber that they felt unsafe with him.

¶ 80 After our review of the entire record, we find that the trial court’s decision to modify decision-making responsibilities was neither unreasonable nor arbitrary and was amply based on the evidence presented. *Bates*, 212 Ill. 2d at 516; *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 81 **B. Parenting Time**

¶ 82 After a finding that there has been a substantial change of circumstances, the court is mandated to consider the best interest factors set forth in section 602.7(b) of the Act, which factors essentially mirror those listed in section 602.5(c). The trial court noted that the testimony of Mother and Father vastly differed on the quality of each parent’s caretaking abilities. The court stated that Father testified that Mother blows child-related issues out of proportion for the purpose of causing drama, while Mother testified that her primary purpose as a parent is to do whatever she can to keep her children healthy and safe. The court concluded that Mother “goes above and beyond to make sure her children get the care and medical attention they need.” The court indicated that both parents testified that they helped with the boys’ homework but noted that Father could not establish that all work was completed when he had parenting time. The court determined that Mother has been the primary caretaker for several years. The court also indicated its concerns with the way Father interacts with the children:

“The Court has concerns with the minor children’s interactions and relationship with their father, the Respondent. These concerns are based upon the information contained in the counselor’s records wherein the boys each discuss screaming and yelling at their dad’s house. Moreover, [H.S.] went as far as to disclose to his

counselor that his dad is a liar and if it were up to him, he would spend all of his time at his mom's house.

When the minor children stay with their mother (the Petitioner), it is clear to the Court that there is a more family-oriented structure in that home. They have routines, sit-down family dinners, sleepovers, movie nights, and other family-based activities. Also, the boys have strong relationships with their stepfather, who lives in Petitioner's home, and older half-siblings, who also live in the home. The Court believes that the minor children's interactions and interrelationships at Petitioner's home support their best interests more so than when compared to Respondent's home."

¶ 83 Because the trial court was in a superior position to assess the credibility of Mother and Father, its decision to modify parenting time must be given deference. *Bates*, 212 Ill. 2d at 516. Again, after our review of the entire record, we find that the court's decision to modify parenting time was neither arbitrary nor unreasonable and was amply based on the evidence presented. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 84 III. CONCLUSION

¶ 85 For the foregoing reasons, we affirm the judgment of the St. Clair County circuit court regarding modification of the parental decision-making responsibilities, parenting time, and the resulting child support order.

¶ 86 Affirmed.