2023 IL App (1st) 221074-U

No. 1-22-1074

Order filed March 31, 2023

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE THE PARENTAGE OF: D.R.B.	)	Appeal from the
	)	Circuit Court of
DANIEL B.,	)	Cook County.
	)	
Petitioner-Appellant,	)	No. 15 D 79103
	)	
v.	)	Honorable
	)	William Yu,
KRISTIE K.,	)	Judge, Presiding.
	)	
Respondent-Appellee.	)	

JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C.A. Walker and Tailor concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's orders modifying the allocation of parenting time where a substantial change in circumstances had occurred since entry of the original parenting plan in 2017 when the child was under two years old. The circuit court's imposition of court-ordered counseling was not a restriction on petitioner's decision-making or parental abilities that required a finding of serious endangerment. The circuit court's award of retroactive child support and section 5/508(b) (750 ILCS 5/508(b) (West 2020) attorney fees was not an abuse of discretion.

¶ 2 Petitioner Daniel B. appeals from the circuit court's order granting respondent Kristie K. the majority of parenting time in regard to their minor child, D.R.B., requiring him to undergo counseling, awarding retroactive child support to respondent, and in awarding respondent section 508(b) (750 ILCS 5/508(b) (West 2020)) attorney fees. On appeal, petitioner contends that: (1) the circuit court erred in modifying his parenting time without considering and finding that a substantial change in circumstances had occurred and that modification was in the minor's best interests, and where the record is devoid of evidence that less time with petitioner would be best for the minor; (2) the circuit court erred in requiring petitioner to undergo counseling and restricting his parental responsibilities without any evidence of the minor's serious endangerment, let alone a finding of the same; (3) the circuit court abused its discretion in awarding respondent one year's worth of retroactive child support given the circumstances of the case and the parties' long history of reserving support; and (4) where the circuit court's ruling expressly limited respondent's section 508(b) (750 ILCS 5/508(b) (West 2020)) fee award to fees associated with three filings only, the court abused its discretion in awarding respondent fees for additional filings not included in its ruling. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record details a highly contentious and acrimonious relationship between the parties, dating back to very shortly after the minor child was born. The record also indicates that both parents have had issues with alcohol usage during the course of this matter.

¶ 5 This case began when petitioner filed a petition to establish parentage of the child on September 1, 2015, the same day he also filed a voluntary acknowledgment of paternity and an emergency petition for a temporary restraining order against respondent. D.R.B. was born on July

10, 2015, and petitioner alleged that while he and respondent were living together when the child was conceived, they were no longer living together when the child was born. Petitioner alleged in his emergency petition for restraining order that the parties ceased living together on August 7, 2015, and respondent was unable to provide a stable environment for the child, did not have a residence, was unemployed and could not provide for the child. Petitioner further alleged that respondent threatened to leave the state with the child and not inform him of her location. He sought a restraining order barring respondent from moving the child outside of Cook County and establishing petitioner as the temporary residential parent of the child. Petitioner also filed a petition for order of protection alleging that respondent drove with the child after drinking and harassed him. On September 1, 2015, the circuit court denied the petition for an order of protection, awarded respondent temporary custody of the child, allowed petitioner visitation at least five times per week for up to three hours at either party's home, and appointed Dr. Karpowicz as the case manager.

¶ 6 Subsequently, on October 13, 2015, respondent filed a petition for an order of protection against petitioner, alleging that on October 11, 2015, he hit her in the head while driving with the child in the car and was intoxicated. Petitioner subsequently stopped the car, grabbed respondent by the hair and the inside of her mouth, and petitioner's brother-in-law had to pull petitioner off of respondent. Respondent was subsequently treated at the hospital for injuries due to the incident. Petitioner responded with his own petition for an order of protection and a motion for visitation on the same day. The circuit court set the matter for hearing and ordered both parties to appear on October 22, 2015, and if respondent failed to appear, custody would be awarded to petitioner.

¶ 7 Respondent retained counsel, who filed an appearance on October 16, 2015, and filed a petition for temporary child support, a motion to suspend or limit visitation by petitioner and a petition for a drug/alcohol assessment. Thereafter, petitioner also retained counsel, who filed an appearance on October 22, 2015. On October 22, 2015, the circuit court reappointed Dr. Karpowicz as the case manager and ordered the parties to meet with him on November 9, 2015, and set temporary visitation for petitioner as follows: each Sunday from noon to 3 p.m. and each Wednesday from 3 p.m. to 6 p.m. The visitation was to be supervised by petitioner's mother and the pickup/drop off was at her residence. The matter was continued to November 16, 2015, for a status from the case manager, status on the pleadings and review of the temporary visitation schedule.

¶ 8 The parties continued to file various petitions and motions directed towards each other and questioning the other's alcohol use and behavior as well as other parenting matters between the years 2015 and 2022. A guardian *ad litem* (GAL) was appointed for the child in November 2015 and the matter was continued for visitation and temporary child support. On December 15, 2015, an order was entered establishing additional supervised visitation for petitioner during Christmas and a revised visitation schedule as well as setting temporary child support at $80 per week without prejudice and subject to a hearing. On February 28, 2016, petitioner was awarded temporary unsupervised visitation with the child on Mondays from 1 p.m. to 6:30 p.m.; Wednesdays from 10 a.m. to 7 p.m.; and Thursdays from 1 p.m. to 6:30 p.m.[1] The order also indicated that except in cases of an emergency, petitioner could not exercise healthcare decisions with respect to the child.

[1] We acknowledge that the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/101 *et seq.* (West 2016)) was amended July 2015 and effective January 2016, changing references to "custody" as parental allocation and "visitation" as parenting time. However, for consistency with the petition and orders filed below, we will use the terms "custody" and "visitation."

An agreed order on March 23, 2016, modified petitioner's visitation time and set Easter visitation. Various other orders that modified petitioner's visitation with the child were subsequently entered. On July 21, 2016, petitioner filed a petition to abate the temporary child support because respondent and the child lived with him.

¶ 9 The record indicates that on September 15, 2016, petitioner was allocated parenting time every Monday from 2:30 p.m. to 7 p.m.; every Wednesday from 10 a.m. to Thursday at 8 a.m.; and every other weekend from Friday at 2:30 p.m. to Sunday at 6 p.m. Each party was to arrange for childcare on Thursday evenings but until petitioner secured childcare, he was allowed additional parenting time on Thursdays until 6 p.m. Subsequently on September 19, 2016, petitioner filed an emergency petition for temporary possession of the child because he observed bruising on the child and that respondent's mother informed him the child had been given Benadryl and over the counter cough medicine that he believed the child was too young to take. Apparently, petitioner took the child and refused to return him, so respondent filed a motion for the return of the child on September 20, 2016. The circuit court entered an order on the same date granting possession of the child until further order of court and directed that respondent was to have no contact with petitioner or the child until further order of court. The order also granted petitioner temporary sole decision-making for the child and further that the child should be examined by a pediatrician, with a next court date set for September 28, 2016. The following day, an order was entered granting respondent visitation with the child until the next court date. Another order was entered on September 23, 2016, granting respondent additional parenting, granting each party the right to make decisions for the child while in his/her possession, and set a status date for October 13, 2016, on a Department of Children and Family Services (DCFS) report. After several other

filings, the matter was continued until February 8, 2017. Respondent filed a petition for an increase in child support and attorney fees on November 22, 2016. Respondent also filed a petition for rule to show cause because petitioner had not paid child support since August 23, 2016, and was in arrears.

¶ 10 An agreed order was entered on December 15, 2016, related to holiday visitation for the parties which further ordered that the parties should not use or consume drugs or alcohol while they had the child. The trial for parenting time was continued by agreed order until April 14, 2017. Petitioner filed a petition for temporary child support from respondent for the child on January 30, 2017. Subsequently, on April 24, 2017, an allocation judgment: allocation of parental responsibilities and parenting plan was entered, subject to its modifiability under section 610.5 (750 ILCS 5/610.5 (West 2016)) of the IMDMA. Under the judgment, both parties were given shared parenting responsibilities for the child and each parent was given principal authority and responsibility for daily and ordinary supervision and care when the child was with that parent. Additionally, the parties were granted joint responsibility for major decisions concerning the child's education through high school and petitioner's address was the residential address for school purposes. Both parties were to share responsibility for major decisions relating to the child's health care with petitioner arranging for all routine medical and dental appointments. Parenting time was allocated as follows: Respondent – every other weekend from Thursday at 6:30 p.m. to Monday morning at 8:30 a.m., alternating Thursdays at 6:30 p.m. to Saturday at 8:30 a.m., and alternating Tuesdays from 4:30 p.m. to 7 p.m. Petitioner was given all other parenting time, including parenting time on Respondent's weekends from 2 p.m. to 4:30 p.m. Holiday and vacation parenting time were also set. The parties entered an agreed order that dictated, among other things,

their responsibilities for health care, education costs, extracurricular expenses, health insurance, and reserved the matter of child support due to the parenting schedule of the parties.

¶ 11 On July 11, 2017, respondent filed a petition for mediation and to modify the parenting allocation judgment in which she sought to limit certain communication and restrain certain conduct of petitioner including his use of text messages that were abusive, accusatory, false and harassing and in violation of the email preference set in the allocation judgment. She further alleged that petitioner used FaceTime as a means to harass her, had sent the police to her home for wellbeing checks for no valid reason but to harass respondent. Petitioner responded with a motion to strike and dismiss on July 18, 2017, which was followed by an amended petition for mediation and to modify the parenting allocation agreement. Respondent subsequently withdrew her petition on December 12, 2017.

¶ 12 On July 10, 2018, petitioner filed a petition for emergency *ex parte* temporary sole parenting order in which he alleged that the health and well-being of the child was currently at risk and that respondent engaged in conduct which created a likelihood of such injury. Specifically, petitioner alleged that: the child was injured on four occasions while with respondent in the past two months; respondent denied his parenting time with the child; respondent allegedly made derogatory statements about petitioner to the child on July 3, 2018; respondent attempted to cover up abuse that the child sustained while in her care and further that the child was diagnosed with allergies to cats and cat dander; and the parties had conflict as it related to the child's pneumonia diagnosis in January 2018. The circuit court appointed a GAL for the child on July 11, 2018, and petitioner's emergency petition was continued until August 2, 2018. Petitioner followed with a petition for indirect civil contempt against respondent for respondent's alleged failure to complete

a parenting class within 30 days of entry of the parties' allocation judgment on April 24, 2017; however, we note that the record contains a certificate of respondent's completion of a parenting class on May 19, 2017. The record reflects that on August 2, 2018, petitioner's petition for rule to show cause was withdrawn; the parties were ordered to exclusively use Talking Parents for communication beginning September 10, 2018; and the child was not to go to his maternal grandmother's home as long as she has cats or to any other home with cats. The order further stated that the parties could record all FaceTime communications.

¶ 13 On September 26, 2018, petitioner filed a petition for mental, physical, drug/alcohol assessment based on an allegation that respondent was hospitalized approximately five times which he believed was due in part to substance abuse and/or a mental condition. Petitioner further alleged that respondent had previously been placed on anxiety medication and was diagnosed with postpartum depression in September 2015, and also that respondent was hospitalized in 2013 for alcohol/substance abuse and attempted suicide. He further alleged that respondent stated in court on September 1, 2015, that she was on medication for bipolar disorder and postpartum depression, and that she had a drinking problem which she was seeking help for. Petitioner also stated on information and belief that respondent consumed alcohol frequently to the point of intoxication and that the well-being of the child would be seriously endangered if he were left alone without proper supervision in respondent's presence. Another case manager was appointed for the parties on December 17, 2018, due to the parties' inability to reach an agreement on shared allocation of parental responsibilities or parenting time.

¶ 14 On January 4, 2019, petitioner filed another petition to modify the allocation judgment regarding tax matters, and health, dental and vision coverage. He also filed another petition for

adjudication of indirect civil contempt against respondent on the same day, alleging that respondent continued to take the child to her mother's house where cats were present despite the court's order not to do so.

¶ 15 In response, respondent filed a petition to modify the parenting allocation agreement on January 24, 2019, alleging that: petitioner made it difficult, if not impossible to make joint decisions related to all aspects of the child's life; during in-person conversations, petitioner swore at respondent and attempted to discuss respondent's personal life instead of the child; during FaceTime conversation, petitioner attempted to discuss respondent's personal life and accused her of being under the influence of something instead of communicating with the child; during the child's medical appointments, petitioner gave false statements to the medical provider and got agitated when the medical providers told him things he did not like and had stormed out of a specialist's office; petitioner threatened respondent in text messages to sue the medical providers; petitioner made false statements regarding meetings with the GAL that never occurred; petitioner threatened respondent's boyfriend; petitioner frequently used the our family wizard app messaging to harass and demean respondent, mention respondent's boyfriend, accuse respondent of bruising or causing illness to the child; petitioner had verbal confrontations with faculty at the child's school and made accusations to the school's corporate office regarding false injuries and bee stings that never happened; petitioner stated in front of the child and through text messages that respondent was not a mother; and petitioner made a number of false police reports against respondent. Respondent concluded that petitioner's conduct towards respondent and others who treated or had contact with the child made it impossible to coparent or make decisions and further stated that petitioner told the child negative things about her and encouraged the child to make false

statements regarding sexual abuse by respondent's boyfriend. Respondent also stated that she resided in a home sufficient to accommodate the child's needs and requirements in the event the majority of parenting time was awarded to her. Respondent sought the modification of the allocation of parenting time such that she would have the majority time and that the child parenting responsibilities and decisions be awarded solely to respondent; an order for child support; that petitioner seek treatment for anger issues and for temporary supervised visitation for petitioner. The parties filed several motions thereafter that were set for later hearing.

¶ 16 Meanwhile, on April 1, 2019, petitioner re-noticed all of his prior motions that were not ruled on by the circuit court: petition for emergency *ex parte* temporary sole parenting that was filed on July 10, 2018; petition to modify allocation judgment regarding tax deduction, health, dental and vision coverage filed on January 4, 2019; petition for indirect civil contempt filed on January 4, 2019; demand for bill of particulars filed on January 28, 2019; and his motion to strike and dismiss respondent's petition to modify the allocation judgment filed on March 5, 2019. Petitioner then filed a second motion to strike and dismiss respondent's petition to modify parenting allocation judgment on April 8, 2019, essentially contending that respondent's modification action was vexatious or constituted harassment.

¶ 17 On June 6, 2019, petitioner filed an emergency motion to suspend or restrict respondent's parenting time and other relief because respondent notified him that she was moving to Manhattan, Illinois, approximately 24 miles from her former residence with someone of the opposite sex, and further that was pregnant. Petitioner's motion stated that he never met respondent's significant other and that the GAL had not had the opportunity to inspect respondent's new residence. Further, petitioner stated that respondent's new residence had a swimming pool and petitioner was unsure

of whether respondent's new residence was child proofed so that the child was not in danger of having access to the swimming pool or whether the child would be exposed to cats or cat dander at respondent's new residence. Petitioner stated that respondent's move would make the distance between their residences much greater and he should not be obligated to drive to respondent's new residence to drop off the child thus it was in the child's best interest that respondent's visitation be suspended or alternately that respondent's visitation be restricted to respondent's former residence until her new residence could be investigated.

¶ 18 On the same date, after argument by the parties' counsels and the GAL, the circuit court found that petitioner's motion was not an emergency, granted respondent time to respond to the petition and ordered that all pickups and drop-offs were to occur at the Orland Park police station until further order of court. The court also ordered that the parenting time per the allocation judgment was to stand.

¶ 19 On July 16, 2019, the parties entered an agreed order that Dr. David Finn was appointed as the 604.10(b) expert in the case and that the parties would equally share the costs of the Dr. Finn's retainer. On July 31, 2019, petitioner filed an emergency petition for an order of protection against respondent, alleging that the child would be abused or neglected if respondent's visitation was allowed to continue. In the accompanying affidavit, petitioner averred that the child was at significant risk of respondent's "increasingly erratic, violent, abusive and neglectful behavior" during her upcoming weekend parenting time beginning on August 1, 2019. Petitioner further averred that such behaviors increased substantially since respondent began living with her boyfriend; that the child had a change in behavior, namely that he became "increasingly timid, fidgety, and jumpy upon returning from weekend parenting time with respondent." Petitioner

alleged that the child was afraid of respondent's boyfriend because of how he hurts respondent; that he himself felt threatened by respondent's boyfriend as well as afraid for the child's safety and well-being after a FaceTime call on July 29, 2019. Petitioner further alleged that the child missed school consistently during respondent's parenting time for no apparent reason since June 2018, which showed respondent's lack of respect for the minor's education and their joint decision making as the child's parents. Petitioner also made allegations of other violent behaviors with respondent's boyfriend, that the child did not want to have parenting time with respondent anymore; that the child used violent language towards respondent's boyfriend increasingly since it began on October 31, 2018; and that the child allegedly saw respondent's boyfriend's "private parts." Petitioner stated that the matter was brought without notice to respondent because notice would provoke a volatile and retaliatory response as well as further neglect towards the child. On the same date, the circuit court ordered that the petition for order of protection remained pending and continued for hearing on August 13, 2019, after service of notice to respondent. On August 1, 2019, petitioner refiled his petition for order of protection, noting that he now lived in Burr Ridge, Illinois and that respondent lived in Manhattan, Illinois.

¶ 20 The circuit court denied petitioner's petition for an order of protection and granted respondent's motion for directed finding following a hearing on August 13, 2019. On September 25, 2019, petitioner filed a motion for substitution of judges as a matter of right, which was granted on December 3, 2019. Respondent subsequently filed a petition for travel with the child on January 23, 2020, stating that she wished to take the child on a trip to Florida in March 2020, taking part of her vacation time with the child early and that the child was only in preschool at the time. However, petitioner would not agree to the change. On the same date, respondent also filed a

motion for order to complete 604.10 custody evaluation with Dr. Finn because petitioner had not paid his part of the retainer, nor had he cooperated with scheduling appointments requested by Dr. Finn. On February 3, 2020, petitioner *pro se* re-noticed his outstanding motions that were filed in 2019 for a second time. On February 19, 2020, the circuit court ordered that Dr. Finn should complete his report based on the information he had obtained thus far, and the matter of petitioner's vacation was set for hearing on February 24, 2020. On February 21, 2020, petitioner filed a *pro se* motion for removal of Dr. Finn as the court-appointed 604(b) evaluator because he believed that Dr. Finn's report would be prejudicial against petitioner based on his nonpayment of the fees and cancellation of his appointments; the fact that respondent and her boyfriend had met with Dr. Finn for more than 20 hours; and that such report would not be in the best interests of the child and should not be considered. On February 24, 2020, after hearing, the circuit court granted respondent leave to take the child on vacation to Florida and that petitioner was to provide a medical card for respondent prior to the trip. The order further stated that petitioner would have make up overnight visitation with the child on March 19 and 20, 2020, and the regular schedule would resume thereafter. In a separate order, petitioner's motion to remove Dr. Finn was denied and his other motions were set for trial on April 1, 2020.[2]

¶ 21 On April 27, 2020, petitioner filed a *pro se* motion to strike and dismiss Dr. Finn's report. One of petitioner's exhibits was the March 8, 2019, affidavit of Dr. Kevin Germino, who averred that he was the child's pediatrician who tested the child for allergies and determined that the child had a moderate allergy to cat dander and that it took approximately one year for a living space to be free of cat dander. Subsequently, on May 12, 2020, petitioner filed a *pro se* motion in *limine* to

[2] This subsequent court date was eventually rescheduled due to the Covid-19 pandemic.

bar the testimony and report of Dr. Finn. On June 11, 2020, respondent filed an amended motion to set a remote hearing for her outstanding January 24, 2019, petition to modify the parenting allocation judgment due to the Covid-19 pandemic. The motion was granted, and the hearing was set for a remote hearing on June 22, 2020, via Zoom. On June 25, 2020, after a hearing, the circuit court entered an order that denied petitioner's demand for a bill of particulars, ordered the parties to exchange financial affidavits within 14 days and the matter was continued on respondent's petition to modify the parenting allocation judgment to July 22, 2020. Several other pleadings were filed by petitioner's retained counsel.

¶ 22 On July 24, 2020, after a hearing, the circuit court entered an order that respondent was the temporarily designated parent for school purposes and that the child would be enrolled in the Manhattan school district where she resides; the parties would cooperate with all requirements of enrolling the child in the school district; and, the school year parenting schedule was set for August 18, 2020. The order also denied petitioner's motions in *limine* and to bar Dr. Finn's report.

¶ 23 Subsequently, on August 4, 2020, respondent filed an emergency petition for a temporary restraining order and preliminary injunction against petitioner. The petition alleged that all parties and the court were made aware of an in-person appointment with the school district for the child to have an initial assessment, which was to occur on petitioner's parenting day. Petitioner told the court he could take the child to the appointment; however, petitioner contacted the school to cancel the appointment and do Zoom instead without respondent's knowledge or consent. Respondent noted that petitioner's mother was his attorney's secretary and petitioner stated that he would do what he wants because he did not have to pay attorney fees. The circuit court ordered on August 5, 2020, that petitioner was to take the child to the scheduled August 6, 2020, screening

appointment in person or, if he could not attend, to tender the child to respondent the night before so that she could take the child to the appointment.

¶ 24 Thereafter, on August 11, 2020, petitioner filed a motion to reconsider the circuit court's July 27, 2020, rulings with regard to the temporary placement of the child with respondent for school because petitioner was now married, and his wife had children attending the school where the child would attend if he were still in petitioner's care. Further, petitioner stated that the school would be conducting in-person learning as opposed to the remote learning that would occur in respondent's school district. Petitioner believed, on information and belief, that the GAL would recommend in-person learning for the child. On August 20, 2020, the circuit court continued petitioner's motion to September 11, 2020, and set the school year parenting hearing for the same date to determine if the school would be eLearning or in-person and to adjust the schedule accordingly.

¶ 25 On September 9, 2020, petitioner, through counsel, re-noticed his motions from 2018 and 2019 a third time. On September 11, 2020, respondent's counsel filed a petition for interim attorney fees and costs based on petitioner's filing of multiple petitions and pleadings that were all denied, and petitioner's failure to cooperate with the 604.10 evaluation. Counsel's petition further alleged that petitioner earned in excess of $100,000 per year and that he did not pay the same amount of attorney fees as respondent because his attorney was his mother's employer. Counsel sought a section 508(a) (750 ILCS 5/508(a) (West 2020)) order directing petitioner to pay $10,000 towards respondent's attorney fees and costs.

¶ 26 Following a hearing on September 11, 2020, regarding the temporary reallocation of parenting time between the parties to respondent as the home school district, the circuit court

entered an order that: (1) beginning immediately, the parties would have a temporary 50/50 parenting time schedule; each parent was to have one week with the child in a sequential rotation from Friday at 4:30 p.m. to the following Friday at 4:30 p.m. and Tuesday evening non-overnight parenting time from 3:30 p.m. to 7:30 p.m. during their nonweekly parenting time; (2) the parties would continue to exchange the child at the Orland Park police station; (3) the child would continue in eLearning at the Manhattan School where the child was then currently enrolled; (4) each party would be entitled to full access to information from the school; and (5) that all necessary releases be signed by each party and submitted to the school to permit the child's participation in eLearning and any inadvertent videotaping during class time. Further, the order was temporary based on the school continuing to do eLearning; once the school returned to in-person attendance, the court would reconsider the allocation of parenting time in light of the new school schedule. A status on all remaining issues was scheduled for October 2, 2020.

¶ 27 On September 21, 2020, petitioner filed a motion for leave to retain his own professional to conduct a 604.10 evaluation and to bar Dr. Finn's report from consideration. The parties entered an agreed order on September 30, 2020, that Dr. Terry D'Amico was appointed as the child's therapist, that the therapist was allowed to speak with the GAL and that the cost was to be evenly split between the parties. On October 2, 2020, after a Zoom status hearing, the court entered an order that enjoined certain negative behaviors by either party as they related to the child and the other parent. The order also granted respondent 21 days to respond to petitioner's motion for a new 604.10 evaluator. As related to the child's schooling, the court's order noted that beginning October 12, 2020, the child would attend in-person school in the Village of Manhattan five days per week from 9 a.m. to 12:45 p.m.; lunch and travel home would occur between 12:45 p.m. and

2 p.m., with a live or prerecorded special from 2 p.m. to 2:30 p.m., and other specified activities from 2:30 p.m. to 3:30 pm. The parties' previous parenting time schedule would end on Friday, October 9, 2020, and a new temporary parenting time schedule was set as follows: after petitioner's return of the child to respondent at 4:30 p.m. on October 9, 2020, respondent would have all parenting time not provided in the order for petitioner; petitioner would have alternate weekend parenting time beginning Thursday, October 15, 2020, from 4:30 p.m. until the following Monday when the petitioner would take the child to school. Petitioner was solely responsible for taking the child to school on Mondays and picking the child up on his Fridays. Respondent's parenting time would begin at 9 a.m. on Monday when the child began school, and petitioner would have midweek parenting time on Mondays from 4 p.m. to 7:30 p.m. following respondent's weekend parenting time. On weeks following petitioner's weekend time, he would have midweek parenting time on Thursdays from 4 p.m. to 7:30 p.m. The order set all remaining issues for hearing on October 29, 2020, via Zoom.

¶ 28 On October 7, 2020, petitioner filed an emergency motion to suspend respondent's parenting time, alleging that the child's health and well-being were at risk and his petition for temporary sole parenting time remained pending since July 10, 2018. To support his petition, petitioner alleged that the child had a fever on three occasions after respondent's parenting time; respondent changed a doctor's appointment for the child; the child had cuts and bruises from a fall; the child had a rash and hives, and his nose was clogged. The pediatrician was unable to determine if the clogged nose was due to a sinus infection or allergies, and medication was prescribed. Petitioner believed that respondent was exposing the child to cat dander which caused allergic reactions and that the child's maternal grandmother had spent time with the child.

Petitioner further alleged that due to Covid restrictions at the child's school, it would not administer the child's nebulizer treatment.

¶ 29 Respondent's objection to this emergency petition was filed on October 7, 2020, noting that petitioner had filed several "emergency" petitions to restrict her parenting time, showing his tendency to file frivolous *ex parte* motions for restrictions on respondent's parenting time or orders of protection. Such behavior was noted by Dr. Finn in his report; and the response further noted that four of the five alleged issues occurred prior to the October 2, 2020, court date yet petitioner did not mention the emergency matters during argument. Respondent sought a ruling denying that such matters were an emergency and for leave to file Rule 137 (eff. Jan. 1, 2018) sanctions for petitioner's filing.

¶ 30 Petitioner responded by filing a second emergency motion to suspend respondent's parenting time on October 16, 2020, which was re-noticed on October 19, 2020. The motion raised all of the same allegations as the earlier motion and added an additional allegation of a fungal infection that the minor child contracted while in respondent's care. Respondent filed an objection to the emergency motion on the same day. The circuit court entered and continued the emergency petition to October 29, 2020, via Zoom.

¶ 31 On November 5, 2020, the circuit court entered an order after a hearing and review of both Dr. Finn's and the GAL's reports related to petitioner's motion *in limine* and to bar Dr. Finn's report. The order denied petitioner's motions to bar Dr. Finn's report without prejudice, stating that they could be brought after petitioner fully cooperated and paid the previously court-ordered retainer and other costs so that Dr. Finn could complete or update his report. The order also denied

respondent's counsel's petition for interim fees without prejudice. A new status date for outstanding petitions was scheduled for December 7, 2020.

¶ 32 On December 1, 2020, petitioner filed a petition to modify the temporary parenting time order alleging that there was a substantial change of circumstances, namely that the Manhattan school district reverted back to eLearning; the child fell behind in his education after missing school due to Covid; the child's teacher indicated that the child did not do well in a larger setting; and the school in petitioner's district had in-person learning with small class sizes that would be in the child's best interest. Petitioner sought a change of the child's residence for school to his home or that the parenting schedule be changed since the child was doing eLearning again. On the same date, petitioner filed a multi-count petition for adjudication of indirect civil contempt related to the child's schooling, respondent's denial of the child's attendance at petitioner's grandfather's funeral, respondent's continued exposure of the child to cat dander, medical-related matters of the child, and disparaging comments made during FaceTime calls.

¶ 33 Following a hearing, the circuit court entered an order on December 8, 2020, that denied the petition to modify the temporary order without prejudice, continued petitioner's multi-count petition for indirect civil contempt and status for Dr. Finn's report on March 16, 2021, set visitation exchanges to the Orland Park police station, and ordered that evaluation for the child with the school speech pathologist with both parties participating.

¶ 34 On December 21, 2020, respondent filed a verified petition to restrict (supervise) petitioner's parenting time alleging that: petitioner continued to file frivolous motions to restrict respondent's parenting time; petitioner had fabricated the child's health issues since October 2020, despite the child having eczema and was historically prone to rashes; the court-ordered therapist

would no longer see the child due to an email from petitioner that accused the therapist of violating the court's order; petitioner contacted the child's school administration in an attempt to get the principal fired, which was relayed to the GAL by the principal; petitioner's false accusation of a rash on the child resulted in DCFS coming to respondent's home on December 17, 2020; an October 2020 emergency room visit due to the child's alleged high fever resulted in a temperature of 96.9; petitioner threatened the GAL with "Board review"; and that Dr. Finn's report noted petitioner's behavior and further that the issues seemed to be growing in severity and frequency. Respondent sought supervised visitation for petitioner with a non-affiliated third party, suspension of overnight visitation, and enjoining petitioner's threatening communication with school and healthcare providers. All matters were subsequently continued by agreed order to March 30, 2021, and the matter was then set for trial on June 1, 2021.

¶ 35 Petitioner filed a petition to modify on February 24, 2021, but only the notice of motion is present in the record. Thereafter on March 21, 2021, respondent filed another emergency petition for temporary restraining order and preliminary injunction against petitioner for his actions with school and healthcare personnel related to the child. Petitioner then filed a second multi-count petition for adjudication of indirect civil contempt on March 26, 2021.

¶ 36 Petitioner filed a third multi-count petition for adjudication of indirect civil contempt on May 25, 2021. Trial was originally set for July 19 and 20, 2021, via Zoom, but subsequently continued to a later date. On August 13, 2021, the court ordered that the child be temporarily enrolled in Wilson Creek for the 2021-2022 school year pending final determination of the ongoing trial, that the school shall do an assessment and relay the results to the GAL, and the GAL would report the results of the assessment to the court. On September 2, 2021, petitioner filed an

emergency motion for temporary relief barring the school district from conducting an IEP on the child and to direct the school to only perform the standard screening for speech issues to determine whether the child should remain in kindergarten or move to first grade. On September 15, 2021, petitioner filed an emergency motion to suspend respondent's parenting time based on allegations related to FaceTime calls on September 14, 2021, after which he sent the police department to respondent's home for a wellness check. Respondent filed an objection to the emergency petition and a petition for Rule 137 sanctions on the same day. In an emergency motion to reconsider also filed on September 15, 2021, petitioner sought a reconsideration of the circuit court's determination that his motion was not an emergency. Respondent subsequently filed a petition for attorney fees and costs under section 508(b) (750 ILCS 5/508(b) (West 2020)) on November 15, 2021, based on petitioner's filing of seven "emergency" petitions since respondent filed her January 24, 2019, petition to modify the parenting allocation judgment. This petition was filed based on the circuit court granting respondent's counsel leave to file a 508(b) petition for the time he had to spend responding to petitioner's emergency motions that the court found not to be an emergency after an evidentiary hearing on October 26, 2021.

¶ 37 At the evidentiary hearing on October 26, 2021, the circuit court heard testimony by the parties and the GAL and considered Dr. Finn's report as well. The court made preliminary oral rulings that it found were in the best interest of the child, namely awarding the majority of parenting time to respondent. The court reserved ruling on its final orders at that time but subsequently issued orders on December 27 and 29, 2021, related to respondent's petition to modify the allocation judgment.

¶ 38 First, the circuit court entered a new, modified allocation judgment on December 27, 2021: allocation of parental responsibilities and parenting plan. In relevant part, the order granted respondent's petition for modification as follows: respondent was granted sole parenting responsibilities for the child subject to the specific terms contained in the modified allocation judgment. Respondent was also granted sole responsibility for major decisions regarding the child's secular education through high school and ordered that the child shall attend public school in the district where the mother resides, with both parents entitled to school records, both parents listed on the school's emergency list, and each parent given the equal right to confer with the child's teachers and counselors. Respondent was granted the sole responsibility for major decisions relating to the child's heath care however each parent was granted equal access to healthcare providers and medical records, and each party was responsible to notify the other of any injury or illness to the child that required other than routine medical attention. Respondent was to arrange all routine medical, dental and other health care appointments for the child but non-routine procedures should be scheduled so both parents could attend. Any necessary emergency medical procedures could be authorized by the parent in physical possession of the child at the time with reasonable efforts made to inform the other parent as soon as reasonably possible. Respondent was to provide petitioner with any medically prescribed instructions for care and medications the child was taking at the time of transfer of physical possession. Both parents were granted reasonable telephone access to the child without interference of the other party.

¶ 39 The modified judgment allocated parenting time as follows: petitioner was allocated every other weekend from Friday pickup after school or if no school at the Orland Park police station at 4:30 p.m. to Sunday evening at 7:30 p.m. with drop off at the Orland Park police station. On the

weeks when petitioner did not have weekend parenting time, he was allocated Monday pickup at school to 7:30 p.m. or if school was not in session, 4:30 p.m. pickup. On weeks where petitioner had the preceding weekend, he was allocated every Thursday pickup at school to 7:30 p.m. or if school was not in session, pickup at 4:30 p.m. All other parenting time was allocated to respondent. Respondent was designated as custodian for purposes of the school code as she was allocated the majority of parenting time.

¶ 40 Finally, the modified judgment indicated that the court was entering separate orders, on the court's own motion, to identify services the court found necessary for petitioner to successfully complete as condition precedents to him petitioning the court for any modification of his parenting time or decision-making of the amended allocation judgment.

¶ 41 Also on December 27, 2021, the circuit court entered an order on its own motion which indicated that after an evidentiary hearing on a petition to modify the parties' April 2017 allocation judgment, an oral ruling was entered from the bench. Since the court's oral ruling, petitioner voluntarily obtained a psychological evaluation from Dr. Michael DeVries without input from the court, GAL or opposing counsel. After vetting Dr. DeVries' qualifications, neither opposing counsel or the GAL objected to his services to petitioner. The court subsequently found that it was in the child's best interests that petitioner complete 26 weeks of counseling with Dr. DeVries to address the grief and loss of the relationship with respondent, processing his anger towards respondent, being able to differentiate between his needs and the child's needs, and any other areas identified by Dr. DeVries.

¶ 42 The court also ordered petitioner to enroll and successfully complete a State of Illinois protocol compliant domestic violence program on the basis of the continuous pattern demonstrated

by petitioner during the proceedings of engaging in a pattern of emotional abuse of respondent in the manner he interacted with her, his filing of emergency motions in court, filing an emergency order of protection against her live-in boyfriend without any factual basis, phone harassment of school administrators at the child's school when petitioner did not agree with the position taken or believed that his interests were not being considered by the school. The court found petitioner's conduct during the proceedings was abuse as defined under the Domestic Violence Act and needed to be addressed successfully as a condition precedent to him petitioning the court for any additional parenting time or any modification of decision-making concerning the child.

¶ 43 On December 29, 2021, the circuit court entered an order on the pending motion for child support. The record reflected that respondent was employed part-time as a dental assistant and previously received unemployment benefits. The court specifically rejected petitioner's argument to impute full-time income to respondent. Petitioner testified that he could not provide his current 2021 year-to-date earnings because it was "top secret." The court found that petitioner failed to present any statutory authority to support his position. After the last court appearance, petitioner's counsel submitted petitioner's tax returns for 2017, 2018, 2019 and 2020 via email, which were objected to by opposing counsel as they were not tendered at the hearing. The court concluded that it could not ascertain the parties' true income from all sources and found that a needs-based child support order was appropriate. Both parties submitted financial affidavits in July 2021, and the court found that the child's reasonable needs per month was $1300. The court further considered that petitioner provided health insurance for the child, the number of overnights petitioner had under the April 2017 allocation judgment as amended in the order entered December 27, 2021, and further that respondent would have the majority of the parenting time. The court therefore

ordered petitioner's monthly child support obligation set at $780, and considering petitioner's request for retroactive support to the date of her petition, the court entered the support obligation retroactive to January 1, 2021.

¶ 44 Lastly, the circuit court entered an order on respondent's motion for attorney fees and sanctions pursuant to section 508(b) (750 ILCS 5/508(b) (West 2020)) on December 29, 2021. The court noted that it granted respondent's counsel leave to file the petition after finding that petitioner's pattern of filing emergency motions was designed to harass respondent and also an attempt to intimidate respondent and keep her on the defense during the proceedings. The court found that petitioner's filings were for an improper purpose under section 508(b) and that his filings needlessly increased the cost of litigation for both parties. The court noted that section 508(b) attorney fees were a sanction and further found that upon review of its October 26, 2021, ruling, it probably unnecessarily limited the scope of the sanctions to only those emergency motions that the court found were not emergencies. Nevertheless, the court found the proceeding including the hearings on October 7, 2020, October 16, 2020, and September 15, 2021, which were not emergencies illustrated the pattern demonstrated by petitioner's litigation strategy during the proceedings. Respondent's fee petition was filed on November 15, 2021, and sought $4739.02, and the court noted petitioner's objections to the reasonableness of the fees. The court specifically found that although the case was a routine parentage case, it was made more complicated and time consuming by petitioner and his pattern of harassing and intimidating litigation that needlessly increased the cost of litigation. The court awarded $4500 as a reasonable sanction under section 508(b) that was not dischargeable in bankruptcy.

¶ 45 On January 20, 2022, petitioner filed a motion to reconsider the circuit court's rulings of December 27 and 29, 2021, based on errors in the court's previous application of existing law. In sum, petitioner concluded that the decision to award respondent sole decision making was in contradiction to the evidence presented and a punishment to petitioner and the child and did not serve the best interests standard. Petitioner also argued that there was no separate petition filed by respondent requesting child support and until the date of the evidentiary hearing, petitioner was exercising considerable parenting time with the child without child support by respondent. Further, petitioner stated that at the evidentiary hearing, the court noted the distance between the parties' residences which would not change and render any future requests for modification of the allocation judgment fruitless, and thus the change was a punishment to petitioner. Petitioner also took issue with the required counseling, arguing that at no time did the court articulate any reasons that necessitated petitioner's completion of 26 weeks of counseling nor did the court make any oral finding that petitioner displayed anger towards respondent. Petitioner contended that such order was in contradiction to the October 26, 2021, oral ruling. Regarding the award of 508(b) attorney fees to respondent, petitioner contends that only three of the pleadings were deemed not to be an emergency thus the fee award was too high.

¶ 46 On June 28, 2022, the circuit court entered an order disposing of petitioner's motion to reconsider.[3] The court found that petitioner failed to meet any of the requirements to support his motion to reconsider and his suggestion that the court's December 27 and 29, 2021, orders should be reconsidered due to a purported inconsistency with its preliminary oral rulings on October 26,

[3] Judge Mark Lopez conducted the evidentiary hearing and entered the orders that were the subject of petitioner's motion to reconsider. Judge William Yu ruled on petitioner's motion to reconsider in June 2022.

2021, were without merit. The circuit court noted that at the conclusion of the October 26, 2021, the court clearly stated that it would enter orders that it thought were in the child's best interest, and consider all of the statutory factors in section 602.5 (750 ILCS 5/602.5 (West 2020)). Put another way, the court concluded that there was no final order until the court examined all of the evidence and applied the relevant statutory factors that were presented at the October hearing which resulted in the written orders of December 27 and 29, 2021. Accordingly, petitioner's motion to reconsider that relied on what the court initially stated before its orders were issued was without merit and denied.

¶ 47 Petitioner filed his timely notice of appeal on July 18, 2022, appealing from denial of his motion to reconsider and all underlying orders.

¶ 48 ANALYSIS

¶ 49 As noted above, petitioner raises the following issues on appeal: (1) the circuit court erred in modifying his parenting time without considering and finding that a substantial change in circumstances had occurred and that modification was in the minor's best interests, and where the record is devoid of evidence that less time with petitioner would be best for the minor; (2) the circuit court erred in requiring petitioner to undergo counseling and restricting his parental responsibilities without any evidence of the minor's serious endangerment, let alone a finding of the same; (3) the circuit court abused its discretion in awarding respondent one year's worth of retroactive child support given the circumstances of the case and the parties' long history of reserving support; and (4) where the circuit court's ruling expressly limited respondent's section 508(b) (750 ILCS 5/508(b) (West 2020)) fee award to fees associated with three filings only, the

court abused its discretion in awarding respondent fees for additional filings not included in its ruling.

¶ 50 A. Timeliness

¶ 51 Before discussing the arguments petitioner raises in his appeal, we address the timeliness of our decision. This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). Pursuant to Rule 311(a)(5), we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Respondent's notice of appeal was filed on July 18, 2022, making the deadline to issue our decision December 15, 2022. However, petitioner filed several motions to supplement the record and additionally filed a motion for extension of time to file his opening brief and respondent subsequently filed a motion for an extension of time to file her brief. Accordingly, we revised the briefing schedule pursuant to those requests. Because this case was not ready for disposition until January 20, 2023, we find good cause for issuing our decision after the 150-day deadline. We now turn our attention to the merits of petitioner's issues on appeal.

¶ 52 B. Petitioner's Issues on Appeal

¶ 53 As a preliminary matter, we note that petitioner's substantive assertions throughout this appeal mischaracterize the evidence in the instant record, and were disputed by respondent's arguments in her brief. We consider petitioner's claims after having undertaken our own examination of the record. See *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 171 (2008). We now turn our attention to petitioner's claims.

¶ 54 1. Modification of Allocated Parenting Time (Petitioner's Issues 1 and 2)

¶ 55 Petitioner first contends that the circuit court erred in modifying his parenting time without considering and finding that a substantial change in circumstances had occurred and that such modification was in the child's best interests. Petitioner argues that the record is devoid of evidence that less time with him would be best for the child. He further maintains that the circuit court must find both that there was a substantial change in circumstances and that a modification is necessary to serve the child's best interests before it has the discretion to modify the parenting time schedule and/or decision-making. Petitioner contends that the circuit court abused its discretion in "abruptly changing" the child's parenting time with him, which was contrary to the child's best interests and further that the court did not find a substantial change in circumstances since entry of the allocation order of 2017 nor that the change was in the child's best interests. He argues that such ruling was an error of law and requires reversal.

¶ 56 He also contends that the circuit court erred in requiring him to undergo counseling and in imposing such counseling as a condition precedent to him seeking a modification of his parenting time or decision making as to the child. Petitioner maintains that there is no evidence in the record that he did anything whatsoever that seriously endangered the child. As such, petitioner contends that the circuit court lacked the authority to enter an order requiring him to undergo counseling and restricting his parental responsibilities pending same.

¶ 57 a. Relevant Statutory and Caselaw

¶ 58 Under section 602.7(b) of the IMDMA, it is presumed that both parents are fit, and the court shall not place any restrictions on parenting time as defined in Sections 600 and 603.10, unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health. 750 ILS 5/602.7(b) (West 2020). Restriction on parenting time is defined in section 600 as "any limitation or condition

placed on parenting time, including supervision." 750 ILCS 5/600 (West 2020). Section 603.10(a) states: "[a]fter a hearing, if the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child." 750 ILCS 5/603.10(a) (West 2020). Orders necessary to protect a child may include a reduction in parenting time, supervision, and/or a requirement to complete a treatment program for behavior that served as the basis for restricting parental responsibilities. Id. §603.10(a)(1), (2), (8) (West 2020); *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 55.

¶ 59 Parenting time may be modified upon a showing that a substantial change has occurred in the circumstances of the child or of either party and modification is necessary to serve the child's best interests. 750 ILCS 5/610.5 (West 2020); *In re Marriage of Virgin*, 2021 IL App (3d) 190650, ¶ 43. Upon such a showing, the court must allocate parenting time according to the best interest of the child. 750 ILCS 5/602.7(a) (West 2020); *Id.* Further, section 603.10(a) of the IMDMA as revised provides for the restriction of parental responsibilities, decision making, and/or parenting time, due to a parent's conduct. *Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 55.

¶ 60 Section 610.5 of the IMDMA provides, in relevant part:

> (a) Unless by stipulation of the parties or except as provided in Section 603.10 of this Act, no motion to modify an order allocating parental decision-making responsibilities, not including parenting time, may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may endanger

seriously his or her mental, moral, or physical health or significantly impair the child's emotional development. Parenting time may be modified at any time, without a showing of serious endangerment, upon a showing of changed circumstances that necessitates modification to serve the best interest of the child.

(b) (Blank).

(c) Except in a case concerning the modification of any restriction of parental responsibilities under Section 603.10, the court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5(a) to (c) (West 2020).

¶ 61 The circuit court is in the best position to assess the credibility of witnesses and to determine the child's best interest, so we afford its allocation of parenting time great deference. *Marriage of Virgin*, 2021 IL App (3d) 190650, ¶ 45. Due to this deference, we will not disturb a circuit court's determination concerning the allocation of parenting time unless it is against the manifest weight of the evidence. *Id.*

¶ 62 b. Discussion

¶ 63 Petitioner first challenges the circuit court's allocation of parenting time, with the majority of parenting time being granted to respondent, contending that there was no substantial change in circumstances that warranted the change. The question of whether a substantial change in

circumstances has occurred is a factual question that we review under the manifest weight of the evidence standard. *In re Marriage of Trapkus*, 2022 IL App (3d) 190631, ¶ 31. When a court determines whether a substantial change in circumstances has occurred, Illinois law requires the court to consider the totality of the circumstances. *Id.* ¶ 33. Section 610.5 of the IMDMA requires a substantial change in circumstances to be based on facts that were not anticipated in the entry of the existing parenting plan. 750 ILCS 5/610.5 (West 2020). After a careful review of the evidence, we reject petitioner's arguments.

¶ 64 The initial allocation of parenting time order was entered in April 2017, when the child was just under two years old. The change in the parenting plan was entered in October and December 2020, when the child was five years old.

¶ 65 Prior to October 2020, the parties had almost 50/50 joint parenting time. However, this court has noted that in cases where the evidence clearly showed that the parents had too much animosity to be able to cooperate, 50/50 arrangements have been set aside. *Id*. ¶ 47. The record reveals this to be the case here. The parties have rarely, if ever, been able to cooperate jointly when it comes to matters related to the child, which resulted in years of litigation as well as some police and DCFS involvement. The record also established some instances of issues between petitioner and healthcare professionals and school personnel which escalated as time went on. These circumstances could qualify as a significant change in circumstances to support a change in parenting time allocation.

¶ 66 Additionally, we note that the child began kindergarten in August 2020 whereas prior to that, the child was only attending preschool. This also constitutes a signification change in circumstances, whereas the parenting schedule was more flexible prior to the child becoming

school age. The record also indicates that both parents moved from Orland Park at some point; petitioner moved to Burr Ridge and respondent moved to Manhattan, which increased the distance between their residences from a few minutes to approximately 40 minutes. We find this change also amounts to a substantial change in circumstances. While petitioner certainly expressed his willingness to make the drive to maintain the prior parenting allocation, the prior schedule was not necessarily within the best interests of the child once he started regular school. The travel time would disrupt the child's morning schedule and school readiness given that he would necessarily have to wake up at least an hour earlier when leaving from petitioner's home.

¶ 67 We conclude that the evidence established that a substantial change of circumstances occurred to support a modification of the allocation of parenting time between the parties. Although the circuit court's order and findings did not expressly say "substantial change in circumstances," we nevertheless find that the modification of parenting time was not against the manifest weight of the evidence based on the factual evidence presented. Under the manifest weight standard, an appellate court will affirm the circuit court's ruling if there is any basis in the record to support the circuit court's findings. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 24. As explained above, we find such basis here. We therefore affirm the circuit court's modification of the allocation of parenting time.

¶ 68 Petitioner next contends that the circuit court erred in requiring petitioner to undergo counseling and restricting his parental responsibilities without any evidence of the minor's serious endangerment, let alone a finding of the same. Petitioner argues that there was no evidence that he did anything that seriously endangered the child and no indication that the circuit court considered the issue of serious endangerment towards the child. At best, petitioner contends that the evidence

showed his negative interactions with respondent. He thus contends that the circuit court had no authority to enter such an order that restricted his parental responsibilities.

¶ 69 Under section 602.7(b) of the IMDMA, the court shall not place any restrictions on parenting time unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health. 750 ILCS 5/602.7(b) (West 2020). Restriction on parenting time is defined in section 600 of the IMDMA as any limitation or condition placed on parenting time. 750 ILCS 5/600 (West 2020). The IMDMA lists restrictions that the circuit court may impose on parental decision-making and parenting time, which includes, among other things: reducing, eliminating, or adjusting decision-making or parental time and supervision. 750 ILCS 5/603.10 (West 2020).

¶ 70 We note, however, that not every condition that the circuit court places upon a parent is a restriction. See *Sperl v. Henry*, 2018 IL 123132, ¶ 60; *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 416 (1994). Examples of visitation restrictions include a termination of visitation, a prohibition on overnight visitation, or a requirement of supervised visitation. *In re K.E.B.*, 2014 IL App (2d) 131332, ¶ 33. A restriction of visitation, which must meet the serious endangerment standard, is an action that limits, restrains, or confines visitation. *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167 (2005); *Wycoff*, 266 Ill. App. 3d at 416. It is not the actual result- the change in visitation- that distinguishes a restriction from a modification, rather, it is the purpose for the change. *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 697 (2009); *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 56.

¶ 71 In this case, it is clear that there were no restrictions placed on petitioner's parenting time under the statute, although there was a modification and a condition precedent to future

modification by petitioner. As noted above, on December 27, 2021, the circuit court entered an order on its own motion which indicated that after an evidentiary hearing on a petition to modify the parties' April 2017 allocation judgment, an oral ruling was entered from the bench indicating that petitioner should seek a psychological evaluation. After the court's oral ruling, petitioner voluntarily obtained a psychological evaluation from Dr. Michael DeVries without input from the court, GAL or opposing counsel. The court subsequently found that it was in the child's best interests that petitioner complete 26 weeks of counseling with Dr. DeVries to address the grief and loss of the relationship with respondent, processing his anger towards respondent, being able to differentiate between his needs and the child's needs, and any other areas identified by Dr. DeVries. Additionally, the court ordered petitioner to enroll and successfully complete a State of Illinois protocol compliant domestic violence program on the basis of the continuous pattern demonstrated by petitioner during the proceedings of engaging in a pattern of emotional abuse of respondent in the manner he interacted with her, his filing of emergency motions in court, filing an emergency order of protection against her live-in boyfriend without any factual basis, phone harassment of school administrators at the child's school when petitioner did not agree with the position taken or believed that his interests were not being considered by the school. The court found petitioner's conduct during the proceedings was abuse as defined under the Domestic Violence Act and needed to be addressed successfully as a condition precedent to him petitioning the court for any additional parenting time or any modification of decision-making concerning the child.

¶ 72 It is clear that the circuit court considered the best interests of the child in making these findings based on the plain language used in its order. Moreover, section 607.6 of the IMDMA

allows for court-ordered counseling, and allows the court to order counseling if it finds that the child's emotional development is impaired. 750 ILCS 5/607.6(a)(2) (West 2020). While the circuit court's order did not expressly state that the child's emotional development was impaired by petitioner's behavior, its specific findings that petitioner's behavior towards respondent during the course of the lengthy proceedings was abusive and that such counseling was in the best interests of the child amounted to an implicit finding that the child's emotional development was affected by petitioner's behavior. It is true that the trial court may not consider conduct of a parent that does not affect the parent's relationship to the child in allocating parental decision making or parenting time (750 ILCS 5/602.5(e), 602.7(c) (West 2020), but, the trial court must consider a parent's ability to cooperate with the other parent, to facilitate a close relationship between the child and the other parent, and to place the needs of the child ahead of his or her own needs (750 ILCS 5/602.5(c)(6), 602.7(b)(9), (12), (13) (West 2020)). It is clear from the circuit court's statements and the entirety of its findings that it did not consider petitioner's behavior in a punitive context, but rather as an indication of his willingness and ability to work with respondent. Thus, it was not improper for the circuit court to consider petitioner's conduct as it related to respondent.

¶ 73 We find that the circuit court's order of counseling was not a restriction on petitioner's parental rights but merely a modification, and as such, only needed to conform to the best interests standard. Based on the record before us, we conclude that the trial court's determination that such counseling was in the best interests of the child was not an abuse of discretion.

¶ 74 2. Retroactive Child Support Order (Petitioner's Issue 3)

¶ 75 Next, petitioner contends that the circuit court erred in ordering a year's worth of retroactive child support to respondent. He argues that at the time of respondent's modification

petition in January 2019, petitioner had the majority parenting time since 2017, and support was previously reserved with neither party paying support to the other. Petitioner maintains that the December 2021 retroactive child support award was entirely unanticipated and given the circumstances of this case and the parties' long history of reserving support, a lengthy retroactive support award that resulted in such a substantial arrearage was an abuse of discretion. Petitioner seeks entry of a prospective child support award only.

¶ 76 A circuit court is authorized to order retroactive child support payments pursuant to section 510(a) of the IMDMA. *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 16. Section 510(a) states that, "the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2020). Thus, under the plain language of the statute, the filing of the motion for modification is the earliest date to which retroactive modification applies. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 63. The decision to award retroactive child support is within the sound discretion of the circuit court. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1119 (2004).

¶ 77 Here, petitioner does not appear to dispute that child support was ordered but merely disputes the retroactive amount because it was "entirely unanticipated." We disagree. The record reveals that respondent filed her petition to modify the allocation judgment on January 24, 2019, which included a request for child support. Thus, petitioner had notice that respondent sought the parenting modification and child support as early as January 2019, and under the IMDMA, the circuit court could have certainly ordered retroactive child support to that date. There is no dispute that neither party paid child support during the lengthy custody dispute and litigation from the

child's birth until the retroactive child support award was entered in December 2021. The record further reveals that respondent first received temporary designation as the primary parent for school purposes in August 2020, but the parties still maintained relatively equal amounts of parenting time. However, respondent became the parent with majority parenting time in October 2020, but no child support was entered at that time. Additionally, the record reveals that petitioner's income was significantly higher than respondent's income, and at the time the retroactive order was entered, respondent had been the parent with majority parenting time for more than a year without any child support. We therefore reject petitioner's claim of surprise with regard to retroactive child support as he was on notice as early as January 2019 of the request for child support, and respondent was granted the majority of parenting time as of October 2020, three months prior to the start of the retroactive child support. Hence, we conclude that the circuit court's order of retroactive child support back to January 2021 was not an abuse of discretion.

¶ 78 3. The Award of 508(b) Fees (Petitioner's Issue 4)

¶ 79 Finally, petitioner contends that the circuit court erred in ordering him to pay section 508(b) (750 ILCS 5/508(b) (West 2020)) fees for filings that were deemed not an emergency. He notes that the circuit court gave respondent leave to file a fee petition under section 508(b) for the time her counsel spent responding to the emergency motions that the court found not to be an emergency. Respondent filed the petition on November 15, 2021, requesting a total of 4739.02 for attorney fees in connection with seven of petitioner's emergency motions filed since 2019. Petitioner argues, as he did in the circuit court below, that the court awarded respondent $4500 in 508(b) fees despite finding that only three of the seven filings were found not to be emergencies. Petitioner further maintains that despite the court's notation that it probably unnecessarily limited

the scope of those pleadings found not to be emergencies, the court did not reconsider or modify that limitation. He concludes that the circuit court therefore abused its discretion in awarding fees for the additional filings not covered by its ruling.

¶ 80 In relevant part, section 508(b) of the IMDMA provides:

> "If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." 750 ILCS 5/508(b) (West 2020).

The circuit court has discretion to determine whether to award attorney fees and we will not disturb that decision unless the court has abused that discretion. *In re Marriage of Davis*, 2019 IL App (3d) 170389, ¶ 22.

¶ 81 Here, the circuit court clearly found that petitioner's pattern of filing emergency motions was designed to harass respondent and was also an attempt to intimidate respondent and keep her on the defense during the proceedings. The court found that petitioner's filings were for an improper purpose under section 508(b) and that his filings needlessly increased the cost of litigation for both parties. Surprisingly, petitioner advances no argument on appeal specifically aimed at the court's finding that his litigation strategy subjected him to sanctions. Rather, petitioner focuses his argument on whether the circuit court improperly included all of his "emergency" filings as non-emergencies subject to sanction when only three of those pleadings was specifically noted as nonemergency during the court's oral pronouncements at the evidentiary hearing on October 26, 2021. Petitioner's argument must fail.

¶ 82 Our supreme court has found, and its rules codify, that an oral pronouncement of judgment is not considered entered when rendered, but rather is considered entered when the oral judgment is entered of record. See *Williams v. BSNF Railroad Co.*, 2015 IL 117444, ¶ 41; Ill. S. Ct. R. 272 (eff. Jan. 1, 2018). Rule 272 governs when judgment is entered and states in relevant part that:

> "If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect and the judgment becomes final when the signed judgment is filed. If no such signed written judgment is to be filed, the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and the judgment is entered at the time it is entered of record. ***" Ill. S. Ct. R. 272 (eff. Jan. 1, 2018).

Before a pronouncement should be taken as the judgment, it must be clear that it was intended as such and not merely an announcement of the opinion of the court or an indication of what the judgment is going to be. *Rocha v. FedEx Corp.*, 2020 IL App (1st) 190041, ¶ 60. Moreover, Illinois law is clear that the written judgment is the order and decision of the court and not the oral pronouncement. *In re Marriage of* Brooks, 138 Ill. App. 3d 252, 266-67 (1985). Oral pronouncements are not final, binding or appealable. *Id.* at 267. As such, prior to the filing of the signed judgment, the court is free, upon its own motion, or that of any party, to alter its oral pronouncements. *Id.* Only the signed judgment embodies the final and binding decision of the court. *Id.*

¶ 83 That is precisely what occurred here. At the conclusion of the evidentiary hearing on October 26, 2021, the circuit court made various findings and announced its decisions on several

substantive matters in the case. However, the circuit court also made clear that it would enter formal written judgments encapsulating its oral pronouncements, which occurred on December 27 and 29, 2021, respectively. During its oral pronouncements related to respondent's leave to file a petition for 508(b) fees, the circuit court initially stated, as petitioner has noted, that respondent could seek fees for those pleadings which the court found were not to be emergencies. However, when the written judgment was rendered, the circuit court orally stated that it probably unnecessarily limited the pleadings to be included in the fee petition and further stated that the three specifically referenced were examples. Respondent's 508(b) fee petition sought approximately $4739, and she was awarded $4500. The circuit court's written judgment is consistent with its oral statement and reflects that it ultimately considered the bulk of the pleadings in question to not be emergencies.

¶ 84 We therefore conclude that, contrary to petitioner's assertions, the circuit court's oral pronouncements related to the 508(b) fee petition on October 26, 2021, were not the final judgment and the written judgment did not have to precisely conform to them. The circuit court's written order was the final judgment which concluded that the bulk of the "emergency" pleadings filed by petitioner were not emergencies, and awarded all but $239 of the requested fees to respondent. The challenged order was properly entered by the circuit court and was not an abuse of discretion.

¶ 85 CONCLUSION

¶ 86 For the foregoing reasons, the orders of the circuit court entered on December 27 and 29, 2021, which modified the parties' parental allocation judgment, required petitioner to undergo counseling services, ordered retroactive child support, and awarded section 508(b) fees are affirmed.

¶ 87 Affirmed.