Illinois Official Reports

Appellate Court

In re Marriage of Wendy W., 2022 IL App (1st) 201000

Appellate Court Caption	*In re* MARRIAGE OF WENDY W., Petitioner-Appellee, and JAMES W., Respondent-Appellant.
District & No.	First District, Fourth Division No. 1-20-1000
Filed	March 24, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 11-D-330274; the Hon. David E. Haracz, Judge, presiding.
Judgment	Certified questions answered.
Counsel on Appeal	Amy L. Jonaitis, of Boike Jonaitis Law LLC, of Chicago, for appellant. Arin Fife and Samantha Ungruh of Family Law Solutions P.C., of Chicago, for appellee. Stuart G. Gelfman of Birnbaum, Haddon, Gelfman & Arnoux LLC, of Chicago, for the minor.

Panel JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Presiding Justice Reyes and Justice Rochford concurred in the judgment and opinion.

OPINION

¶ 1 In a post dissolution of marriage proceeding, the petitioner mother sought to restrict the respondent father's parenting time with their minor child based on allegations that the father would continue to interfere with the medical services necessary for the child's mental health. The father moved for production of the child's medical, psychiatric, psychological, and school records, and the mother objected based on the child's statutory privilege to keep the requested records confidential and objection to the disclosure of the records to his father. The trial court denied the father's entire request for production of the child's records.

¶ 2 Thereafter, the trial court granted the father's request to certify for permissive interlocutory appeal, pursuant to Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019), the following questions:

> "1. May a trial court, in a proceeding relating to a petition for a restriction of parenting time pursuant to 750 ILCS 5/603.10 where the allegations involve the mental health of a child, deny a party the ability to discover otherwise relevant evidence on the ground that the child in question does not want said evidence disclosed to one party?
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> 2. May a trial court, in a proceeding relating to a petition for a restriction of parenting time pursuant to 750 ILCS 5/603.10 where the allegations involve the mental health of a child, deny a party the ability to discover school (from a therapeutic school) and medical records that are clearly relevant to the proceedings?
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> 3. May a trial court, in a proceeding relating to a petition for a restriction of parenting time pursuant to 750 ILCS 5/603.10 where the allegations involve the mental health of a child, deny a party the ability to discover the child's medical records that the party is entitled to have access to pursuant to the parties' parental allocation judgment?
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> 4. May a trial court, in a proceeding relating to a petition for a restriction of parenting time pursuant to 750 ILCS 5/603.10 where the allegations involve the mental health of a child, deny a party the ability to discover the child's school records (from a therapeutic school) that the party is entitled to have access to pursuant to the parties' parental allocation judgment?
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> 5. May a trial court, in a proceeding relating to a petition for a restriction of parenting time pursuant to 750 ILCS 5/603.10 where the allegations involve the mental health of a child, deny a party access to documentation that the child representative in the case has reviewed?"

This court granted the father's application for leave to appeal. *Id.*

¶ 3 On appeal, the father argues that the trial court cannot deny him access to the requested records based on the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 *et seq.* (West 2018)) because it is not applicable here.

In the alternative, the father argues that, if the Confidentiality Act is applicable, it is not a basis to deny him access to the requested records because the mother placed the child's mental health at issue, the trial court failed to review the requested records *in camera*, fundamental fairness necessitates the release of the records to the father, and the evidence of the child's objection to disclosure of the records was insufficient. The father also argues that he has a right to the documents under the broad scope of discovery, he cannot be denied access to the records based on a best interests of the child standard or any statutory provision, and the trial court's ruling improperly modified the provisions of the parties' allocation judgment without the filing of the requisite pleading. This court notes that the father's arguments on appeal raise several issues that exceed the parameters of the certified questions and, thus, will not be addressed by this court.

¶ 4 The mother and the child's representative argue that all the requested records are subject to the patient-therapist privilege and should not be disclosed.

¶ 5 As framed, the certified questions are overbroad (*e.g.*, vague references to the discovery of "otherwise relevant evidence" and the failure to limit the questions to the patient-therapist privilege at issue in this case). Answering the certified questions as framed would necessarily bear on situations not before this court and would therefore result in an improper advisory opinion. This court, however, may modify the certified questions to correct any impropriety. See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) ("In all appeals the reviewing court may, in its discretion, and on such terms as it deems just, *** enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief *** that the case may require."); *De Bouse v. Bayer AG*, 235 Ill. 2d 544, 556-67 (2009) (the court modified a certified question or read a certified question in such a way as to bring it within the ambit of a proper question of law). Here, the interests of judicial economy favor modification of the certified questions.

¶ 6 Consequently, this court, in the exercise of caution, has modified the certified questions as follows for conciseness and to correct for overbreadth: May a trial court, in a proceeding relating to a petition to restrict parenting time pursuant to section 603.10 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/603.10 (West 2018)), where the allegations involve the mental health of a child who is at least 12 but under 18 years old, deny a parent based on the provisions of the Confidentiality Act (740 ILCS 110/1 *et seq.* (West 2018)) and the best interests of the child (1) the ability to discover otherwise relevant evidence concerning the child's mental health and therapeutic school records on the ground that the child in question does not want said evidence disclosed to that one parent; (2) the ability to discover the child's medical records concerning the child's mental health and school records from a therapeutic school even though those records are relevant to the proceedings and the parent is entitled to have access to those records pursuant to the parties' parental allocation judgment; and/or (3) access to the child's mental health and therapeutic school records that the child's representative has reviewed?

¶ 7 For the reasons that follow, we answer the modified certified questions as follows. As to question 1, we answer yes regarding the mental health medical records except for limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed and no regarding the nonprivileged and nonconfidential school records. As to question 2, we answer yes regarding the mental health medical records, except for limited information regarding the child's current physical and

mental condition, diagnosis, treatment needs, services provided, and services needed, and no regarding the nonprivileged and nonconfidential school records. As to question 3, we answer yes regarding the mental health medical records except for limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided and services needed, and no regarding the nonprivileged and nonconfidential school records. We remand the cause to the circuit court for further proceedings.[1]

¶ 8 I. BACKGROUND

¶ 9 Wendy and James W. were married in 1996 and have two children. Their emancipated child was born in 2001, and their minor child was born in 2006. Wendy filed a petition for dissolution of marriage in 2011, and the court appointed Stuart Gelfman as the children's representative.

¶ 10 In 2016, the court entered a judgment of dissolution of marriage and an allocation judgment regarding the allocation of parenting responsibilities and the parenting plan. The allocation judgment provided that the "parents shall be entitled to duplicate originals of the children's school records (including but not limited to grade reports)" and if the children's schools do not cooperate in this regard, then the parents shall timely provide these materials to the other except in cases of emergency. The allocation judgment also provides that "[e]ach parent shall have access to [the children's] health care providers and medical and dental records, and each parent will provide the other with the names, addresses and telephone numbers, and any other relevant information necessary to access the providers of any health, psychological, dental or other care to their children."

¶ 11 On July 1, 2019, Wendy filed an emergency petition to resume supervised parenting time concerning the minor child and for other relief. Wendy asked the court to either suspend James's parenting time with the child or have that parenting time be supervised, restrict James's contact with the child, order James not to interfere with the mental health care of the child, and require James to surrender any firearm owner identification card and guns. Wendy stated that James had supervised visitation with the children until about May 2019 and there was currently an emergency order of protection in place protecting her from James. Wendy alleged that (1) the minor child suffered from extreme anxiety and depression, was under the care of a psychiatrist and therapist, and had been prescribed medication to deal with those diagnoses; (2) since James's unsupervised parenting time with the minor child resumed, the child exhibited concerning symptoms, which upon information and belief, were the result of statements and suggestions James made to the minor child; (3) these concerning symptoms included the child's belief that Wendy was trying to kidnap and poison him with his food and prescription medicines, refusal to take his medication and drinking and eating very little, refusal to get out of bed, and complaints of hallucinations; (4) after the child had an emergency appointment with the psychiatrist, the psychiatrist and other health professionals advised that the child begin a partial hospitalization program; (5) James had not been supportive of the

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

Although the deadline for filing the appellant's reply brief expired on January 18, 2021, this case was not designated as ready for review and randomly assigned to a division of this court until September 2021.

child's therapy and had refused to communicate with past health professionals; and (6) Wendy and Gelfman went to the hospital intake with the child, who was transported to begin an in-patient hospitalization program. Wendy asserted that James's unsupervised visitation was a serious endangerment to the child because James could continue to impede the medical help necessary for the child's mental health and emotional well-being and it was in the child's best interests that James's visits either be suspended or supervised and any contact with the child be prohibited unless otherwise recommended by the child's treating physician.

¶ 12 Also on July 1, 2019, the court entered an order whereby James's parenting time and other contact with the minor child was voluntarily suspended until further order of the court. The court also ordered James not to cause any impediment to the child's mental health care. This order remains in full force and effect, pending an evidentiary hearing.

¶ 13 In about November 2019, the child began attending a therapeutic school, which provides both schooling and therapy services for the child.

¶ 14 In December 2019, James filed a request to produce the medical, psychiatric, psychological and school records of the minor child. Specifically, James requested (1) the names, addresses, and telephone numbers of all medical, psychiatric, and psychological providers of services for the child from June 1, 2018, to the present; (2) copies of all written reports from all those service providers, including hospitals, received by Wendy or Gelfman from June 1, 2018, to the present; (3) copies of all correspondence from those service providers received by Wendy or Gelfman from June 1, 2018, to the present; (4) a list of all medication ordered by those service providers and taken by the child from June 1, 2018, to the present; and (5) copies of all the child's school reports for each school term received by Wendy or Gelfman for the 2018 and 2019 calendar years.

¶ 15 Wendy filed her objection to the request to produce, citing section 4(a)(3) of the Confidentiality Act (*id.* § 4(a)(3)), which provides generally that a child who is receiving mental health services and is at least 12 but under 18 years old can object to a parent's request to inspect and copy the child's mental health therapy records. Wendy alleged that James has a long history of impeding the child's receipt of necessary treatment from mental health providers, the child's mental and physical health improved since James's parenting time with the child was suspended, the child objected to the production of any of the requested documents and information to James, and the child's therapists have compelling reasons to deny James access to their records because it would put the child's mental and physical health in jeopardy.

¶ 16 In January 2020, James filed a petition to restore his parenting time with the minor child and for production of the child's medical records. James alleged that there was no evidence the child objected to James having access to the child's medical and school records and James believed the child did not object. James also alleged that he had not been an impediment to the child's mental health care; James's request for the child's records and contact with his health care providers had been completely denied; there was no reason to deny James access to the child's medical and school records; and it was in the child's best interest that James's contact and parenting time be restored and his access to the child's records granted.

¶ 17 On February 20, 2020, the court heard argument on James's petition to restore his parenting time and produce all the minor child's medical records. The trial court denied James's requests for the child's records and continued the matter of the restoration of James's parenting time. The record on review does not contain a transcript or bystander's report of this proceeding.

¶ 18 In March 2020, James moved the court to reconsider its February 20, 2020, ruling because, *inter alia*, the court did not have access to the minor child and none of the records at issue were produced for the court's inspection. James acknowledged, however, that Gelfman informed the court at the February hearing that the child did not want James to see the records and the child's therapist advised that it would not be in the child's interest for James to have access to the records. James asked the court to examine the medical, psychiatric, and therapeutic records of the minor child to determine if those records should be released to James and to set a prompt date for the *in camera* testimony of the child. James also argued that there was no statutory basis to deny him access to the child's school records.

¶ 19 In her response, Wendy acknowledged that the court contemplated the possibility of reviewing the records and, after considering all facts and opinions presented, decided that an *in camera* review was not necessary to rule on James's petition. Wendy asked the court to deny James's motion for reconsideration.

¶ 20 In his reply, James stated that, when the court held a pretrial conference with the parties' counsel and Gelfman on February 20, 2020, the court "did not consider whether the medical records should be submitted to the Court, but the ruling was made primarily by the representations of [Gelfman]." James also stated that the court had the authority to conduct an *in camera* review of the records at issue.

¶ 21 On May 21, 2020, the court, after hearing argument, denied James's motion for reconsideration. The record on review does not contain a transcript or bystander's report of this proceeding.

¶ 22 On June 17, 2020, James moved the court to certify questions for interlocutory appeal. In her response, Wendy argued that an interlocutory appeal was not appropriate due to the nature and history of this case, where the questions related solely to the minor child's rights to confidentiality of his medical records and James had a history of frivolous abuses of the court system to increase the costs of litigation and harass Wendy. In his response on behalf of the child, Gelfman stated that he did not believe it would be in the child's best interests to release the medical and school records to James.

¶ 23 After argument, the trial court granted on August 24, 2020, James's motion to certify his proposed questions for interlocutory appeal. The court explained that it had denied James's request for the minor child's school records because the child was attending a therapeutic school, which was providing mental health therapy.

¶ 24 II. ANALYSIS

¶ 25 James argues that the trial court cannot deny him access to the requested records based on the Confidentiality Act because it is not applicable here. In the alternative, he argues that if the Confidentiality Act is applicable, it is not a basis to deny him access to the requested records because Wendy placed the child's mental health at issue, the trial court failed to review the requested records *in camera*, fundamental fairness necessitates the release of the records to James, and the evidence of the child's objection to disclosure of the records was insufficient. James also argues that he has the right to the documents under the broad scope of discovery, he cannot be denied access to the records based on a best interests of the child standard or any statutory provision, and the trial court's ruling improperly modified the provisions of the parties' allocation judgment without the filing of the requisite pleading.

¶ 26 Our review of the questions certified by the trial court is governed by Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019) and is limited to the certified questions presented to the court. *Fosse v. Pensabene*, 362 Ill. App. 3d 172, 177 (2005). Rule 308 provides an avenue of permissive appeal for interlocutory orders where the trial court has deemed that they involve a question of law as to which there is substantial ground for difference of opinion and where an immediate appeal from the order may materially advance the ultimate termination of the litigation. Ill. S. Ct. R. 308(a) (eff. Oct. 1, 2019). With rare exceptions, we do not expand the question under review to answer other, unasked questions. *Fosse*, 362 Ill. App. 3d at 177. "Our task is to answer the certified questions rather than to rule on the propriety of any underlying order." *Id.* Certified questions must not seek an application of the law to the facts of a specific case. *De Bouse*, 235 Ill. 2d at 557. If addressing a certified question will result in an answer that is advisory or provisional, the certified question should not be reached. See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 469-70 (1998); *In re Estate of Luccio*, 2012 IL App (1st) 121153, ¶ 32 ("The courts of Illinois do not issue advisory opinions to guide future litigation ***.").

¶ 27 We note that many of James's arguments go beyond the parameters of our review of the issues raised in the certified questions. Therefore, we will answer only the modified certified questions as they relate to James's request for production of various records concerning his minor child's mental health records and school records where the child objected to disclosure of those records by invoking the patient-therapist privilege. "A certified question under Rule 308 necessarily presents a question of law, which we review *de novo*." *Bowman v. Ottney*, 2015 IL 119000, ¶ 8; see also *Thomas v. Weatherguard Construction Co.*, 2015 IL App (1st) 142785, ¶ 63 (under *de novo* review, the reviewing court performs the same analysis a trial judge would perform).

¶ 28 The issues raised by the modified certified questions of law are whether a trial court, in a proceeding related to a petition to restrict parenting time under section 603.10 of the Marriage Act (750 ILCS 5/603.10 (West 2018)), where the allegations involve the mental health of a child who is at least 12 but under 18 years old, may deny a parent based on the provisions of the Confidentiality Act or the best interests of the child (1) the ability to discover otherwise relevant evidence concerning the child's mental health and therapeutic school records on the ground that the child in question does not want said evidence disclosed to that one parent, (2) the ability to discover the child's medical records concerning the child's mental health and school records from a therapeutic school even though those records are relevant to the proceedings and the parent is entitled to have access to those records pursuant to the parties' parental allocation judgment, and (3) access to the child's mental health and therapeutic school records that the child's representative has reviewed.

¶ 29 In order to answer the certified questions, we must construe certain provisions of the Confidentiality Act. The fundamental rule of statutory construction is to give effect to the intention of the legislature. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 274-75 (2009). The most reliable indicator of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Taylor v. Pekin Insurance Co.*, 231 Ill. 2d 390, 395 (2008). Where the statutory language is clear and unambiguous, the court must give effect to the language without resort to other tools of interpretation. *Exelon Corp.*, 234 Ill. 2d at 275. "When construing statutory language, we view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Bowman*,

2015 IL 119000, ¶ 9. In construing a statute, it is never proper for a court to depart from the plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *Exelon Corp.*, 234 Ill. 2d at 275.

¶ 30 "Absent statutory definitions indicating a different legislative intent, words in a statute are to be given their ordinary and popularly understood meaning. To ascertain the ordinary and popular meaning of words, this court sometimes uses the dictionary as a resource." *Id.* Where the meaning of a statute is unclear from a reading of its language, courts may look beyond the statutory language and consider the purpose of the law, the evils it was intended to remedy, and the legislative history of the statute. *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 524 (2002). Construing a statute is a pure question of law and is subject to *de novo* review. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 31 Privileges are "governed by the principles of the common law as they may be interpreted by Illinois courts in the light of reason and experience," except as otherwise provided by applicable statute. Ill. R. Evid. 501 (eff. Jan. 1, 2011). The Confidentiality Act imposes stringent protections on the disclosure of mental health records for litigation purposes, identifies who may request the records and for what purposes, and regulates how the request for disclosure should be made and handled. 740 ILCS 110/1 *et seq.* (West 2018). The Confidentiality Act establishes, except as provided therein, that "[a]ll records and communications shall be confidential and shall not be disclosed" (*id.* § 3(a)) and that, in any legal proceeding or preliminary proceeding, "a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications" (*id.* § 10(a)). "[A]nyone seeking the nonconsensual release of mental health information faces a formidable challenge" (*Norskog v. Pfiel*, 197 Ill. 2d 60, 72 (2001)), and exceptions to the Confidentiality Act "are very narrow" (*Sassali v. Rockford Memorial Hospital*, 296 Ill. App. 3d 80, 83 (1998)).

¶ 32 The purpose of the Confidentiality Act "is to preserve the confidentiality of the records and communications of persons who are receiving or who have received mental-health services." *Novak v. Rathnam*, 106 Ill. 2d 478, 483 (1985); see also *Norskog*, 197 Ill. 2d at 72 ("people will increasingly avail themselves of needed treatment if they are confident that their privacy will be protected"); *House v. SwedishAmerican Hospital*, 206 Ill. App. 3d 437, 446 (1990) (Confidentiality Act "only applies to situations in which the patient is seeking treatment for a mental health condition"); *Dymek v. Nyquist*, 128 Ill. App. 3d 859, 863 (1984) (where a person makes statements to a therapist in the course of a professional consultation, those statements are privileged); *Martino v. Family Service Agency*, 112 Ill. App. 3d 593, 599-600 (1982) (Confidentiality Act "was intended to include all those persons entering into a therapeutic relationship with clients").

¶ 33 The records made confidential under the Confidentiality Act refer to "any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided." 740 ILCS 110/2 (West 2018). " 'Record' does not include a reference to the receipt of mental health or developmental disabilities services noted during a patient history and physical or other summary of care." *Id.* The communications made confidential under the Confidentiality Act refer to "any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which

indicates that a person is a recipient." *Id.* Further, the term "recipient" means "a person who is receiving or has received mental health or developmental disabilities services"; the term "therapist" means "a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services"; and the term "mental health or developmental disabilities services" "includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation." *Id.*

¶ 34 By its plain terms, the Confidentiality Act is applicable to this dispute involving the minor child's objection to the disclosure of his confidential mental health records and communications to James. Moreover, we reject James's assertion that the statute does not apply in this case because James, instead of requesting the documents from the therapist, requested the documents from Wendy, whom James asserts has the documents in her possession and control and has no standing to object to the disclosure of the documents to him. James cannot avoid the effect of the child asserting his privilege against disclosure by seeking the documents from another source besides the therapist. See *Norskog*, 197 Ill. 2d at 73 (minor's lack of consent to disclosure prevented the parents from revealing records relating to their conversations with therapist about the minor).

¶ 35 Wendy and the child's representative contend that all the mental health and school records requested by James in discovery are privileged under sections 3(a) and 4(a)(3) of the Confidentiality Act. We disagree.

¶ 36 Section 3(a) of the Confidentiality Act provides:

> "§ 3. (a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act. Unless otherwise expressly provided for in this Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship." 740 ILCS 110/3(a) (West 2018).

¶ 37 Section 4(a)(3) of the Confidentiality Act provides:

> "§ 4. (a) The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:
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> * * *
>
> (3) the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying the access. *The parent* or guardian *who is denied access by* either *the recipient* or the therapist *may petition a court for access to the record*. *Nothing in this paragraph is intended to prohibit the parent* or guardian *of a recipient who is at least 12 but under 18 years from requesting and receiving the following information: current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any*[.]" (Emphases added.) *Id.* § 4(a)(3).

¶ 38 By its plain language, section 4(a)(3) provides that even though the minor child at issue here, who is between 12 and 18 years old, objected to the disclosure of his mental health records to James, James may petition the court for access to those records. Moreover, despite the child's objection, James is still entitled to request and receive the limited information specifically allowed under section 4(a)(3) about the child's current physical and mental

condition, diagnosis, treatment needs, services provided, and services needed, including medication, if any. When a parent in James's position petitions the court for access to the record *beyond the limited information to which that parent is entitled*, the court, in the exercise of its discretion in discovery matters (see *Pemberton v. Tieman*, 117 Ill. App. 3d 502, 505 (1983) (the rules regarding discovery give great discretion to the trial court, and its exercise of discretion will not be disturbed on appeal absent an abuse of discretion)) and its authority to act in the best interests of the child (see 750 ILCS 5/602.5 (West 2018) (the court shall allocate parental decision-making responsibilities according to the child's best interests)), may deny the parent access to the full mental health record, including the type of information James sought in his discovery request, *i.e.*, (1) the names, addresses, and telephone numbers of all the child's medical, psychiatric, and psychological service providers; (2) copies of those service providers' written reports; and (3) copies of all correspondence from those service providers.

¶ 39 Contrary to James's assertion on appeal, no language in the Confidentiality Act provides that the disclosure of any confidential record or communication to Wendy or Gelfman somehow nullifies the child's objection to the disclosure of the same information to James. To the contrary, section 10(a)(1) of the Confidentiality Act provides, in pertinent part:

> "§ 10. (a) Except as provided herein, in any civil *** proceeding, or in any proceeding preliminary thereto, *a recipient*, and a therapist on behalf and in the interest of a recipient, *has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications*.
>
> (1) Records and communications may be disclosed in a civil *** proceeding in which *the recipient introduces* his mental condition or any aspect of his services received for such condition as an element of *his claim or defense* ***. *** However, for purposes of this [Confidentiality] Act, *in any action brought or defended under the [Marriage Act], *** mental condition* shall not be deemed to be introduced merely by making such claim and *shall be deemed to be introduced only if the recipient or a witness on his behalf first testifies concerning the record or communication*." (Emphases added.) 740 ILCS 110/10(a)(1) (West 2018).

As made clear by this section, the minor child has not forfeited his privilege against the disclosure of his confidential mental health records and communications because the minor child did not introduce his mental condition or any aspect of his mental health services as an element of any claim of his in his parents' post-dissolution of marriage proceeding. Moreover, neither the minor nor any witness on his behalf testified concerning the minor's privileged records or communications. See *Johnston v. Weil*, 241 Ill. 2d 169, 183-85 (2011) (section 110(a)(1) exception does not apply in any proceeding under the Marriage Act unless the recipient testifies concerning the record or communication); *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 36 (if the recipient has not placed his mental health at issue, disclosure of the records or communications is not permitted). In addition, Wendy and Gelfman would be in violation of the Confidentiality Act if they ignored the minor child's objection and forwarded any confidential record or communication in their possession to James. See 740 ILCS 110/16 (West 2018) ("[a]ny person who knowingly and wilfully violates any provision of this Act is guilty of a Class A misdemeanor"); *id.* § 15 ("Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act.").

¶ 40 Furthermore, James's argument that he is entitled to the requested mental health records under the terms of the parties' allocation judgment is unavailing because the minor child was not a party to the petition for dissolution of marriage and cannot be said to have waived or forfeited his right to assert the patient-therapist privilege based on that proceeding. See *id.* § 14 ("[a]ny agreement purporting to waive any of the provisions of this [Confidentiality] Act is void"); *Chicago Housing Authority v. Human Rights Comm'n*, 325 Ill. App. 3d 1115, 1130-31 (2001) (the patient holds the privilege, and the patient alone can waive it).

¶ 41 James also argues that the trial court improperly expanded the privilege under the Confidentiality Act to include a minor child's therapeutic school records when the court denied James's request for the child's school reports for each school term received by Wendy or Gelfman for the 2018 and 2019 calendar years. James argues that he is entitled to these records as a parent.

¶ 42 The trial court's decision was based on the child's attendance at a therapeutic school, which provides academic instruction in a therapeutic setting. The Confidentiality Act, however, does not mention school records, which creates some ambiguity in situations involving therapeutic schools. "A statute is ambiguous if it is susceptible to two equally reasonable and conflicting interpretations." *Land v. Board of Education of Chicago*, 202 Ill. 2d 414, 426 (2002). When the statutory language is ambiguous, we "may consider other extrinsic aids for construction, such as legislative history and transcripts of legislative debates, to resolve the ambiguity." *People v. Collins*, 214 Ill. 2d 206, 214 (2005). The rule of *in pari materia* is another extrinsic aid for construction of an ambiguous statute. *People v. 1946 Buick*, 127 Ill. 2d 374, 377 (1989) ("before the rule of *in pari materia* is applied, the statute to be construed must be found to be ambiguous"). Under this rule "two legislative acts that address the same subject are considered with reference to one another, so that they may be given harmonious effect." *Land*, 202 Ill. 2d at 422. Accordingly, we look to the Illinois School Student Records Act (Student Records Act) (105 ILCS 10/1 *et seq.* (West 2020)), which specifies the types of records to which the parent of a child attending a public school may and may not have access.

¶ 43 Under the Student Records Act,

> " '[s]chool' means *any public* preschool, day care center, kindergarten, nursery, *elementary or secondary educational institution*, vocational school, *special educational facility or any other elementary or secondary educational agency or institution* and any person, agency or institution which maintains school student records from more than one school, but does not include a private or non-public school." (Emphases added.) *Id.* § 2(b).

This broad definition of *school* is expansive enough to include a therapeutic school.

¶ 44 The Student Records Act further provides:

> "(d) 'School Student Record' means any writing or other recorded information concerning a student *** maintained by a school ***. ***
>
> (e) 'Student Permanent Record' means the minimum personal information necessary to a school in the education of the student ***. Such information may include the *student's* name, birth date, address, *grades and grade level*, parents' names and addresses, *attendance records*, and such other entries as the State Board may require or authorize.

(f) 'Student Temporary Record' means *all information* contained in a school student record but not contained in the student permanent record. Such information *may include* family background information, *intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations*, and other information of clear relevance to the education of the student ***. *** In addition, the student temporary record shall include information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction. For purposes of this provision, serious disciplinary infractions means: infractions involving drugs, weapons, or bodily harm to another." (Emphases added.) *Id.* § 2(e)-(f).

¶ 45 Regarding a parent's access to a child's records, the Student Records Act provides:

"§ 5. (a) A parent *** shall have the right to inspect and copy all school student permanent and temporary records of that parent's child. *** No person who is prohibited by an order of protection from inspecting or obtaining school records of a student pursuant to the Illinois Domestic Violence Act of 1986 [(750 ILCS 60/101 *et seq.* (West 2020))], as now or hereafter amended, shall have any right of access to, or inspection of, the school records of that student. ***

* * *

(f) Nothing contained in this Act shall be construed to impair or limit the confidentiality of:

(1) Communications otherwise protected by law as privileged or confidential, including but not limited to, information communicated in confidence to a physician, psychologist or other psychotherapist, school social worker, school counselor, school psychologist, or school social worker, school counselor, or school psychologist intern who works under the direct supervision of a school social worker, school counselor, or school psychologist; or

(2) Information which is communicated by a student or parent *in confidence to school personnel*[.]" (Emphases added.) *Id.* § 5.

¶ 46 Section 6 of the Student Records Act provides in relevant part:

"§ 6. (a) No school student records or information therein may be released, transferred, disclosed or otherwise disseminated, except as follows:

(1) to a parent or student or person specifically designated as a representative by a parent, as provided in paragraph (a) of Section 5;

* * *

(5) pursuant to a court order, provided that the parent shall be given prompt written notice upon receipt of such order of the terms of the order, the nature and substance of the information proposed to be released in compliance with such order and an opportunity to inspect and copy the school records and to challenge their contents pursuant to section 7;

(6) to any person as specifically required by State or federal law[.]" *Id.* § 6.

¶ 47 Section 5(f)(1) of the Student Records Act recognizes the patient-therapist privilege and keeps confidential information communicated in confidence to a psychologist or other psychotherapist, school social worker, school counselor, school psychologist, or school social worker, school counselor, or school psychologist intern who works under the direct supervision

of a school social worker, school counselor, or school psychologist. This list of protected communications includes information communicated *in confidence* to a teacher of an academic subject at a therapeutic school. *Id.* § 5(f)(2).

¶ 48 Construing the provisions of the Student Records Act and the Confidentiality Act harmoniously, we conclude that privileged records and communications under the Confidentiality Act do not include a minor child's grades, grade level, academic assessments, and similar information, even if that child attends a therapeutic day school. Consequently, a trial court cannot deny a parent under section 4(a)(3) of the Confidentiality Act access to the nonprivileged school records of a minor child who attends a therapeutic school even if that child, who is at least 12 but under 18 years, objects to the parent's request to inspect and copy those records. Furthermore, the trial court may conduct an *in camera* review to ensure that the therapeutic school's records do not contain any privileged information concerning the child's mental health services beyond the limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, which the parent is entitled to receive. 740 ILCS 110/4(a)(3) (West 2018).

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, we answer the certified questions as follows. In a proceeding related to a petition to restrict parenting time under section 603.10 of the Marriage Act (750 ILCS 5/603.10 (West 2018)), where the allegations involve the mental health of a child who is at least 12 but under 18 years old, the trial court may deny a parent based on the provisions of the Confidentiality Act or the best interests of the child (1) the ability to discover otherwise relevant evidence concerning the child's mental health records, except for limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, on the ground that the child in question does not want said evidence disclosed to that one parent (however, this privilege from disclosure does not extend to the child's nonprivileged and nonconfidential records at a therapeutic school); (2) the ability to discover the child's medical records concerning the child's mental health, except for limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, even though those records are relevant to the proceedings and the parent is entitled to have access to those records pursuant to the parties' parental allocation judgment (however, this privilege from disclosure does not extend to the child's nonprivileged and nonconfidential records at a therapeutic school); and (3) access to the child's mental health records, except for limited information regarding the child's current physical and mental condition, diagnosis, treatment needs, services provided, and services needed, that the child's representative has reviewed (however, this privilege from disclosure does not extend to the child's nonprivileged and nonconfidential records at a therapeutic school).

¶ 51 Certified questions answered.