THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a)

APPEAL NO. 123602

IN THE SUPREME COURT OF ILLINOIS

TODD FATKIN,	)	
	)	On appeal from Illinois Appellate
Respondent-Appellant,	)	Court, Third District, No. 3-17-0779
vs.	)	
	)	On appeal from the Circuit Court
DANIELLE FATKIN,	)	of Knox County, No. 2014 D 96
	)	
Petitioner-Appellee.	)	Honorable Paul L Mangieri
	)	Circuit Judge Presiding

BRIEF OF APPELLANT TODD FATKIN

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INTRODUCTORY STATEMENT

This action was brought by Todd Fatkin as a post-dissolution petition for leave to relocate with the parties' two minor children. The Trial Court, after a bench trial, granted Todd's petition but reserved two issues. The judgment is not based upon the verdict of a jury, and no question is raised on the pleadings.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the Appellate Court lacked jurisdiction to hear the appeal of this relocation case, where: (a) the Trial Court order is not a final order, as it expressly reserves two issues integrally related to the relocation issue; (b) there was no Rule 304(a) finding; (c) Rule 304(b)(6) does not apply to relocation judgments; and (d) no other rule confers appellate jurisdiction.

II. Whether the Appellate Court erred in improperly reweighing the evidence and substituting its judgment for that of the Trial Court in this relocation matter when the Trial Court judgment was not clearly against the manifest weight of the evidence.

STATEMENT OF JURISDICTION

This cause involves an appeal from a Trial Court judgment dated November, 13, 2017. Danielle Fatkin's Notice of Appeal was filed November 16, 2017. On April 25, 2018, the Appellate Court entered its judgment reversing the Trial Court. Todd Fatkin's Petition for Leave to

Appeal was filed May 22, 2018, and was allowed on June 27, 2018. Todd Fatkin contends appellate jurisdiction was lacking.

STATEMENT OF FACTS

This action was brought by Todd Fatkin for leave to relocate with the parties' two minor children from East Galesburg, Illinois to Virginia Beach, Virginia. (A 15). After an evidentiary hearing and an *in camera* interview with the parties' older child, the Trial Court determined that it was in the best interests of the children that Todd be allowed to relocate with the children to Virginia. (A 35-36). The Trial Court entered its order on November 13, 2017, expressly reserving the issues of allocation of the travel expenses and child support modifications necessitated by the relocation. (A 35-36). On November 16, 2017, Danielle Fatkin filed her Notice of Appeal. (A37). On April 25, 2018, the Appellate Court entered its judgment, with Justice Schmidt dissenting. (A 40, 56). Justice Schmidt's dissent argues that the Appellate Court lacked jurisdiction to hear the appeal and that the Appellate Court erred in reweighing the evidence and reversing the Trial Court. (A 56).

The parties have two children, namely Lucas S. Fatkin, who is now thirteen years old; and Lillian G. Fatkin, who is now seven years old. (C 23). The parties moved to Galesburg, Illinois in August, 2008, as Danielle found a job as a professor at Knox College in Galesburg. (R 765). In the original phase of the divorce proceeding in this case, the trial court

established custody (prior to the change in vocabulary) and a parenting schedule on July 16, 2015. (A 1-8). The parties were awarded joint custody, and if after consultation the parties could not agree on major medical, educational, religious or extracurricular decisions for Lucas and Lillian, then Todd was permitted to make the final decision. (A 1). The parenting schedule provided that Todd had the children in his care for eight out of fourteen days and nights in a two-week period, and Danielle had the remaining six. (A 2). The parties were ordered to split the summer breaks as equally as possible by alternating one-week periods. (A 4). Each party was allotted two consecutive weeks of parenting time during the summer breaks. (A 4).

As a professor at Knox College, Danielle's work schedule generally tracks the academic calendar such that she is at work from approximately 8:30 a.m. until 2:30 p.m. on days when she has parenting time with the children (R 766-767). On days when it is Todd's scheduled parenting time with the children, Danielle is at work from 8:30 a.m. until 2:30 p.m., and then after dropping the children off with Todd, she returns to campus and works from approximately 5:00 p.m. until 6:00 p.m. or 7:00 p.m. (R 767).

Danielle lives in Knoxville, Illinois. (R 764). Her residence is approximately two miles from Todd's residence in East Galesburg, Illinois. (R 311). Danielle exercises her parenting time regularly. (R

583). Danielle has been a coach for Lucas' soccer teams, regularly volunteers in the children's classrooms and has been a room mother for Lucas. (R 776-777). Danielle has been actively involved in the children's academic development, including attending parent-teacher conferences and remaining in regular contact with the children's teachers. (R 776). Danielle testified that she and the children enjoy numerous activities together, whether that be baking in the kitchen, running, biking, hiking, camping, going on road trips, going to the local library and horseback riding. (R 781-781). Both parents have been involved with scheduling the children's medical appointments. (R 788-789).

Danielle testified that she is happy as a professor at Knox College and has not looked for work at other institutions. (R 708-709). The term of Danielle's contract with Knox College is through 2020, and if she is not granted tenure in 2019, she will no longer be employed there. (R 796). Danielle testified that she has not considered any plans for that contingency. (R 797). She dates a gentleman who lives in Knoxville, Tennessee and who is a professor there. (R 709). She has visited him in Tennessee a few times, and he has visited her in Galesburg several times. (R 709-710). Danielle denied that she had been searching for employment in Tennessee. (R 708-709). However, Lucas told the Court *in camera* that he had overheard Danielle on more than one occasion discuss the possibility of relocating to Knoxville, Tennessee. (R 748-749). The Trial Court found Lucas more credible on this issue than Danielle.

(A 33-34). The Trial Court then found that Danielle exhibited a double standard as it related to her opposition to the relocation, as she too was considering relocation. (A 34).

Todd Fatkin resides in East Galesburg. (R 625). He holds a Bachelor of Fine Arts degree from the University of Colorado with an emphasis in oil painting and drawing. (R. 588). He is trained as a Montessori teacher. (R 311). He also obtained his Associates Degree to be a dental hygienist and is licensed as a dental hygienist in both Illinois and Virginia. (R 633).

Todd worked for Aspen Dental in Peoria, Illinois from 2011 through August, 2015. (R 589). He left Aspen Dental, referencing an ethical objection to the way Aspen Dental conducts business, and to accept a higher paying position in Moline, Illinois. (R 634). Todd's employment as a dental hygienist in Moline was terminated in November or December of 2015. (R 635-637). As a dental hygienist in Moline and Peoria, Todd had earned as much as approximately $50,000.00 in gross annual income. (R 633).

Todd has not worked as a dental hygienist since he was discharged from the Moline job in late 2015. (R 637-640). Since that time, Todd has looked for work as a dental hygienist in Galesburg, Knoxville and Monmouth, Illinois. (R 638). He has not looked for work in Peoria or the Quad Cities. (R 638-639). Todd testified that the commute from East

Galesburg to either Peoria or the Quad Cities was problematic and would take time away from his ability to be with the children. (R 697-698).

Todd is currently employed as a community services officer with the City of Galesburg. (R 584). He earns between $12.00 and $12.50 per hour. (R 652). Todd is limited to 1000 hours per year by the City, so he only works from April through October. (R 584-587). Todd draws unemployment compensation while he is laid off. (R 632). Todd receives $508 per month in child support from Danielle. (A 26).

Lucas and Lillian attend public school in Knoxville, Illinois. (R 591). Academically, Lillian is doing very well. (R 774). Lucas' grades include Bs, Cs and Ds. (R 773). Lucas and Lillian have friends in the community and at school. (R 779-781). Lucas has been bullied at school, being called a "girl" and a "jew" and shamed because he doesn't play football. (R 798-799). Both have been very involved in extracurricular activities in the Galesburg area. (R 774-775). Their activities have included, at various times, piano, drums, hockey, soccer, swimming, horseback riding, baseball, tennis, 4-H, Boy Scouts, jazz band, gymnastics and ballet. (R 774-775).

Both are healthy children, overall, although Lucas has scoliosis and wears a brace for the condition. (R 605-607). Lucas sees a physician in Peoria for his scoliosis. (R 606). Danielle did not know how Lucas feels about her and could not characterize the relationship

between them. (R 805). Danielle testified that Lucas loved his father very much. (R 805).

On or about February 10, 2017, Todd placed Danielle on written notice of his intention to relocate with the children to Virginia Beach, Virginia. (C 265-267). On or about March 6, 2017, Danielle objected to the relocation. (C 268-270). Thereafter, the parties participated in mediation on the issue which did not result in an agreement. (C 280-282, 288). Todd filed his Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois on June 5, 2017. (C 283-285).

Todd grew up in Virginia Beach and his parents still reside there. (R 600). Todd's father is in good health in his mid-60s, but Todd's mother is in stage 5 renal failure. (R 600-605). Todd and the children would live with Todd's mother and father without the obligation to pay rent. (R 602-603). Todd's parents are financially secure. (A 27).

Todd testified that the children's general quality of life and standard of living will be improved with a move to Virginia Beach, because there will be superior educational and extracurricular opportunities for the children there, the medical and hospital facilities in Virginia Beach are superior to those in the Galesburg area, and it will benefit the children to live with and have regular contact with Todd's parents. (C 283-285).

Regarding employment in Virginia Beach, Todd testified that he has a job offer from Recreational Equipment Inc. in Virginia Beach, a company he had worked for before. (R 611-612). Todd presented a letter from Recreational Equipment Inc. corroborating that fact. (E 68; R 611-612). The job would pay an hourly wage of anywhere from $9.50 to $16.50 per hour, and Todd believed he would be on the higher end of that scale. (E 68). Todd testified that he believed he could also find a dental hygienist job in Virginia Beach (making twice the hourly rate available in the Galesburg area (R 591)), and he hoped to work part time as a dental hygienist and part time at Recreational Equipment Inc. (R 615-616).

Todd also testified that he was very familiar with the school system in Virginia Beach and that it was far superior to that of Knoxville, Illinois. (R 593). Todd testified that Lucas was interested in playing soccer, which was offered at the school he would attend in Virginia Beach. (R 594). Todd testified that the Virginia Beach community was more diverse and multi-cultural than the Galesburg area. (R 593). Todd testified that the children's opportunities for extracurricular activities would be even better in Virginia Beach. (R 593, 618). Todd testified in detail how the children would be benefitted by the arts and cultural opportunities in Virginia Beach. (R 596-597).

The parties' 13 year old son, Lucas, testified *in camera* on October 10, 2017. (R 732-758). Lucas clearly expressed his desire to move with his father to Virginia. (R 738). The trial court found Lucas was "extremely articulate, mature" and "expressed reasoned and independent preferences as to relocation." (A29). Lucas testified concerning the impact such a move might have on his relationship with Danielle as follows:

> THE COURT: All right. If this move went through, that would affect the time that you spend with your parents because your mom lives in Knoxville and you guys live in East Galesburg?
>
> LUCAS FATKIN: Yeah.
>
> THE COURT: How do you feel about that?
>
> LUCAS FATKIN: Honestly, I know this might sound sad, but I think I might be able to live without my mom.
>
> THE COURT: Okay. Why -- why is that?
>
> LUCAS FATKIN: I kind of like don't understand her lifestyle and don't really like it.
>
> THE COURT: Yeah. What's it like? I mean, I –
>
> LUCAS FATKIN: She like kind of seems to be in la la land kind of most of the time. (R744).

Additionally, the trial court found that "while expressing his love for both parents, Lucas clearly views Todd and [sic] the most caring, understanding and nurturing parent, as compared to Danielle whom he finds to be confusing, arbitrary and withdrawn at times." (A29).

The Trial Court entered a 13-page order granting the petition to relocate. (C 309-321). The Trial Court set forth the various factors under 750 ILCS 5/609.2(g) and articulated its basis for granting the petition. (C 315-318). The Trial Court also found that the granting of the petition for relocation raises the issue of the reasonable costs of transportation connected with the exercise of both parties' parenting time; and also alters the number of nights each party will have the children, and therefore it was necessary that those issues be addressed. (A 35). However, the Trial Court reserved ruling on those issues for later determination because the record did not contain sufficient information about the parties' financial circumstances on which to base such a ruling, and the Trial Court's order expressly states "[t]he issue of transportation costs and child support is hereby reserved." (A 36). No Rule 304(a) finding was made. (C 309-321).

On November 16, 2017, Danielle filed her Notice of Appeal. (A 37). On April 25, 2018, the Appellate Court entered its judgment reversing the Trial Court, with Justice Schmidt dissenting. (A 55-56). Todd's Petition For Leave To Appeal (PLA) was filed May 22, 2018. The PLA was allowed by the Supreme Court on June 27, 2018.

ARGUMENT

I. The Appellate Court Lacked Jurisdiction to Decide this Appeal and Misinterpreted Supreme Court Rule 304(b)(6).

A. Introduction.

The question of whether or not an appellate court has jurisdiction to hear an appeal should be a fairly straightforward, bright-line analysis. Appellate jurisdiction in domestic relations cases has been complicated for decades. "When domestic relations lawyers consider an appeal of a trial court's judgment, the most difficult issue to determine is when a court order is a final order and thus appealable." Gitlin and Haaff, *Appellate Review in Domestic Relations Cases: The Elusive Final and Appealable Order*, 88 Ill.B.J. 444, 444 (2000). The law can and should be clearer on this issue. Unfortunately, the Appellate Court decision in the case at bar further muddies what are already very murky waters.

An historical treatment of the subject of appellate jurisdiction in domestic relations cases is provided by Gunnar J. Gitlin and Chris S. Haaff, in their 2000 Illinois Bar Journal Article, *Appellate Review in Domestic Relations Cases: The Elusive Final and Appealable Order*. Since publication of that article, there has been little light brought to the subject, with the notable exception of Illinois Supreme Court Rule 304(b)(6), which does not apply to relocation cases. However, the Appellate Court's decision in the instant case, creates additional confusion by misinterpreting Rule 304(b)(6) and applying it to relocation

cases. The Appellate Court's decision in this case also creates two different answers to the question of whether Rule 304(b)(6) confers appellate jurisdiction over relocation judgments to the extent those judgments touch on the issue of allocation of parental responsibilities. The Third District Appellate Court suggests a nuanced test for jurisdiction which considers the degree to which the Trial Court relocation order touches on allocation of parental rights and responsibilities. Respectfully, in this area of jurisprudence, a brighter line rule is preferable, and the Illinois Supreme Court has an opportunity with this case to provide that clarity.

Where, as here, the Appellate Court has considered the merits of a case when it had no jurisdiction to do so, the Illinois Supreme Court must vacate that court's judgment and dismiss the appeal. *Almgren v. Rush–Presbyterian–St. Luke's Medical Center*, 162 Ill.2d 205, 216-217 (1994)

B. The Standard of Review is *De Novo* on Jurisdiction.

The issue of jurisdiction is a legal question which is reviewed *de novo*. *In re Marriage of Teymour*, 2017 IL App (1st 161091, ¶ 10.

C. <u>The Appellate Court Lacked Jurisdiction Because the Trial Court Order is not Final.</u>

The Appellate Court lacked appellate jurisdiction to decide this appeal. See *Deckard v. Joiner*, 44 Ill.2d 412, 419 (1970); *In re Marriage of Leopando*, 96 Ill.2d 114, 117-119 (1983); *Franson v. Micelli*, 172 Ill.2d

352, 357-358 (1996); *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶¶ 22-23, and *In re Marriage of Bednar*, 146 Ill. App. 3d 704, 708 (1986).

Pursuant to Supreme Court Rule 301, a "final" judgment is required for an appeal. The appellate court, subject to exceptions for appeals from interlocutory orders specified in the Supreme Court Rules, is without jurisdiction to review judgments, orders, or decrees that are not final. *Flores v. Dugan*, 91 Ill.2d 108, 112 (1982). The Trial Court order entered November 13, 2017 is not a final order. The Trial Court order expressly reserved ruling on two issues raised by Todd's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois, namely: (1) allocation of the reasonable costs of transportation necessary for parenting time; and (2) modification of child support in light of the fact that the allocation of parenting time was altered. (A 55-56). Both of these reserved issues are integral to, and intertwined with, the sole claim raised in the trial court – the relocation of the children. These issues are not merely incidental to the core issue of relocation. They are integral. *See Franson v. Micelli,* 172 Ill.2d 352, 356 (1996); *Deckard v. Joiner*, 44 Ill.2d 412, 416-417 (1970)(claims that are incidental to the ultimate rights sought to be determined by the underlying petition do not render an order nonfinal).

A final judgment has been defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. *Towns v. Yellow Cab Co.*, 73 Ill.2d 113, 119 (1978). "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof." *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill.2d 153, 159 (1998). An order will be classified as final when it terminates the litigation on the merits of the case so that, if affirmed, the trial court has only to proceed with execution of the judgment. *In re Marriage of Thomas*, 213 Ill. App. 3d 1073, 1074 (3d Dist. 1991)(trial court failed in its order to dispose of all of the property); *Department of Public Aid ex rel. Chiapelli v. Viviano*, 195 Ill.App.3d 1033, 1035 (5th Dist. 1990)(trial court's entry of order concerning retroactive support which required natural father to provide retroactive support at rate of 20% of his net income was not a final order for purposes of appeal, where trial court had not as yet determined what the amount of retroactive support would be, and determination was not a mere ministerial act upon which a calculation could easily be measured, and method of payment was not addressed by trial court but was delayed until father submitted proof of income). The Trial Court order does not meet the test for finality.

In the context of dissolution proceedings, ancillary issues such as child support, maintenance, custody, and property division were

considered to be part of a single claim. As such, orders entered resolving some of these issues were not final or appealable until the court resolves all ancillary issues. *In re Marriage of Mackin*, 391 Ill.App.3d 518, 520 (2009)(citing *In re Marriage of Leopando*, 96 Ill.2d 114 (1983)). Child support has been held to be "a matter of substantial controversy" and not merely incidental. *In re Marriage of Mackin*, 391 Ill.App.3d at 520. Thus, where the issue of child support is not fully resolved, there is no final and appealable order. *In re Marriage of Mackin*, 391 Ill.App.3d at 520. This rule applies to retroactive child support obligations and to future obligations. *Franson v. Micelli*, 172 Ill.2d 352, 357 (1996).

While the single claim rule of *Leopando* has been superseded by Illinois Supreme Court Rule 304(b)(6) effective February 26, 2010 (and later amended) as it relates to orders deciding custody or allocation of parental rights and responsibilities (see *In re Marriage of Harris*, 2015 IL App (2d) 140616 ¶16) it does not change the rule that child support is an integral issue in domestic relations litigation – including relocation cases.

Therefore, the trial court order is not final and appealable under Rule 301, as it fails to completely resolve the one set of intertwined and integrally related issues before the trial court on Todd's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois.

D. Neither Rule 304(a) nor Rule 304(b)(6) Can Solve the Lack of Finality.

This lack of finality cannot be solved by a Supreme Court Rule 304(a) finding because no such finding was made in this case by the Trial Court. Neither can it be solved by Rule 304(b)(6) because Rule 304(b)(6) does not identify relocation judgments as one of the types of judgments to which it is applicable.

Generally, parties may only appeal from final orders disposing of every claim in a case. *John G. Phillips & Associates v. Brown*, 197 Ill.2d 337, 339 (2001). Where fewer than all of the claims are resolved in the trial court order, the judgment will not be appealable under Rule 304(a) unless the trial court makes the requisite finding that there is no just cause for delay. *Id.* Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved. *Marsh v. Evangelical Covenant Church of Hinsdale,* 138 Ill.2d 458, 464 (1990).

The rule was meant "to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy." *Marsh*, 138 Ill.2d at 465. *See also In re Marriage of A'Hearn*, 408 Ill.App.3d 1091, 1094 (3d Dist. 2011).

Neither does Rule 304(b)(6) solve the jurisdictional problem. *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶¶ 22-23, and *In re*

Marriage of Bednar, 146 Ill. App. 3d 704, 708 (1986) stand for this very proposition. Rule 304(b)(6) is merely intended to excuse the need for a Rule 304(a) finding in the case of a final custody or allocation of parental rights judgment where other claims remain pending. Nevertheless, the Third District Appellate Court relies on Rule 304(b)(6) to support appellate jurisdiction in this relocation case.

Rule 304(b)(6) provides:

> (b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule: … (6) A custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) or Illinois Parentage Act of 2015 (750 ILCS 46/101 et seq.).

The case at bar is a "relocation" case, not a "custody or allocation of parental responsibilities" case. *See In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶¶ 22-23, and *In re Marriage of Bednar*, 146 Ill. App. 3d 704, 708 (1986). The Special Supreme Court Committee on Child Custody Issues makes the following comments on the new Rule 304(b)(6):

> The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 et seq.), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term "custody"

> while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

If the Supreme Court had wanted to make Rule 304(b)(6) applicable to "relocation" judgments, then it certainly could have expressly done so by specifically identifying relocation cases as being subject to the Rule. For example, unlike Rule 304(b)(6), Supreme Court Rule 306(a)(5) specifically makes reference to "relocation" cases. Rule 304(b)(6) simply does not.

The other comments accompanying this new Rule are equally instructive. They provide:

> The term "custody judgment" comes from section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610), where it is used to refer to the trial court's permanent determination of custody entered incident to the dissolution of marriage, as distinguished from any temporary or interim orders of custody entered pursuant to section 603 of the Act (750 ILCS 5/603) and any orders modifying child custody subsequent to the dissolution of a marriage pursuant to section 610 of the Act (750 ILCS 5/610). The Illinois Parentage Act of 1984 also uses the term "judgment" to refer to the order which resolves custody of the subject child. See 750 ILCS 45/14.
>
> Subparagraph (b)(6) is adopted pursuant to the authority given to the Illinois Supreme Court by article VI, sections 6 and 16, of the Illinois Constitution of 1970. The intent behind the addition of subparagraph (b)(6) was to supercede the supreme court's decision in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). In *Leopando,* the court held that the dissolution of marriage comprises a single, indivisible claim and that, therefore, a child custody determination cannot be severed from the rest of the dissolution of the marriage and appealed on its own under Rule 304(a). Now, a child custody judgment, even when it is entered prior to the

> resolution of other matters involved in the dissolution proceeding such as property distribution and support, shall be treated as a distinct claim and shall be appealable without a special finding. A custody judgment entered pursuant to section 14 of the Illinois Parentage Act of 1984 shall also be appealable without a special finding. The goal of this amendment is to promote stability for affected families by providing a means to obtain swifter resolution of child custody matters.

Nowhere in the comments is a "relocation" judgment mentioned. It does not appear that a judgment regarding relocation was intended to be covered by the plain language of Rule 304(b)(6).

Furthermore, even were a relocation judgment considered to be included in 304(b)(6), that does not resolve the fact that the trial court in the case at bar did not decide all of the pending issues directly related to the single relocation issue. The issues of transportation costs and child support are integral to, intertwined with, and directly related to, the relocation matter itself and are not separate and distinct or incidental claims as contemplated by Rule 304(a) or Rule 304(b)(6). The trial court order is not final.

E. The Third District Appellate Court Declined to Follow Two First District Appellate Cases Which Hold Appellate Jurisdiction is Lacking.

In his dissent, Justice Schmidt points out that the majority erred in attempting to distinguish *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, and *In re Marriage of Bednar*, 146 Ill. App. 3d 704 (1st Dist. 1986). In *Rogan*, the First District Appellate Court held that an order denying a mother's post-dissolution petition to relocate was not a

"custody judgment" or a modification of custody as contemplated by Rule 304(b)(6). *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶¶ 22-23. In addition, in *Bednar* a mother appealed the denial of her motion to dismiss the father's removal petition, contending the removal petition constituted a petition to modify custody where the parties had joint custody, and the First District Appellate Court held that a removal is not a petition to modify custody as a matter of law, even when the parties had been awarded joint custody. *In re Marriage of Bednar*, 146 Ill. App. 3d at 708.

The impact of the Third District Appellate Court judgment in this case is the creation of a trap for the unwary. It makes the issue of appellate jurisdiction in relocation cases overly complex and fraught with uncertainty. It makes the appeal rights of Illinois litigants different depending upon which appellate district they are litigating in. At best, it creates a balancing test for jurisdiction – where the litigants must base their decision to appeal on an analysis of to what degree the relocation judgment addresses allocation of parental responsibilities. On the positive side, however, this case also poses an opportunity for the Illinois Supreme Court to provide clarity on the proper interpretation of its Rule 304(b)(6) in this context and what constitutes a final judgment in post-dissolution cases involving relocation.

From a policy perspective, there are at least two competing interests at issue in this context. First, the law should discourage piece-

meal appeals, and to that end, appellate jurisdiction should require any appealable judgment to be final. Second, the law should encourage prompt final resolution of matters involving children, and to that end, appellate jurisdiction should allow for appeals from final judgments that address certain types of time-sensitive issues. These two interests are harmonized in Rule 304(b)(6) as it currently reads, and there is no need to interpret the rule or amend the rule to include relocation judgments, especially those which expressly reserve key issues like child support and transportation expenses.

A premature notice of appeal does not confer jurisdiction on the appellate court. *In re Marriage of Gutman,* 232 Ill.2d 145, 156 (2008). Therefore, there was no alternative for the Appellate Court but to dismiss the appeal for lack of jurisdiction. It was error not to dismiss the appeal.

II. The Trial Court Order Is Not Clearly Against the Manifest Weight of the Evidence.

The Appellate Court erred in applying the standard of review. This case is governed by *In re Marriage of Eckert*, 119 Ill.2d 316, 328 (1998) and *In re Marriage of Collingbourne*, 204 Ill.2d 498, 536 (2003), and the applicable standard of review is "clearly against the manifest weight of the evidence." *Id.*

In both *Eckert* and *Collingbourne* the Illinois Supreme Court reversed the Appellate Court for erroneously finding that the trial court's removal (now relocation) order was clearly against the manifest weight of

the evidence. *Eckert*, 119 Ill.2d at 319; *Collingbourne*, 204 Ill.2d at 536. Like the case at bar, in *Collingbourne*, the trial court had granted the petition for removal, and the appellate court had reversed. *Collingbourne*, 204 Ill.2d at 536. The Illinois Supreme Court reversed the appellate court and affirmed the trial court. *Id.*, at 536.

The Supreme Court in both *Eckert* and *Collingbourne* was clear that there is a strong and compelling presumption in favor of the trial court's order in cases of this type. *Eckert*, 119 Ill.2d at 330; *Collingbourne*, 204 Ill.2d at 521-22. The Supreme Court stated: "'The trier of fact had significant opportunity to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities. We should not disturb the determination of the trial court unless it has resulted in manifest injustice or is against the manifest weight of the evidence. The presumption in favor of the result reached by the trial court is always strong and compelling in this type of case.'" *Eckert*, 119 Ill.2d at 330.

This is wise from an appellate jurisprudence standpoint because there are certain things that trial courts can do much more effectively than appellate courts, and there are certain types of cases which lend themselves to decisions based upon the type of input trial courts are better suited to obtain. Trial courts should be extended deference in these cases as it relates to their findings and conclusions. The Illinois

Supreme Court has explained that "such deference was appropriate because '[t]he trier of fact had significant opportunity to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities.' *Eckert*, 119 Ill.2d at 330 *Collingbourne*, 204 Ill.2d at 522.

The Supreme Court in *Eckert* went on to explain that in removal (now relocation) cases: "It is not the function of a court of review to reweigh the evidence." *Eckert*, 199 Ill.2d at 328; See also *In re Marriage of Elliott*, 279 Ill. App. 3d 1061, 1065–66 (3d Dist. 1996). A trial court's determination regarding the children's best interests will not be reversed on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 18 (citing *In re Marriage of Eckert*, 119 Ill.2d 316, 328 (1998)).

The manifest weight of the evidence standard has been explained in many ways. "A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *In re Marriage of Bhati*, 397 Ill. App. 3d 53, 61 (1st Dist. 2009). "The trial court's decision is against the manifest weight of the evidence only if the evidence "clearly" calls for a conclusion opposite to that reached by the trial court or only if the factual findings on which the

decision depends are clearly, plainly, and indisputably erroneous." *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 18 (citing *Wakeland v. City of Urbana*, 333 Ill.App.3d 1131, 1139 (2002)). The modifiers "manifest," "clearly," and "any" signal that even if the appellate court were to disagree with the trial court's decision and even if that disagreement were reasonable, that would not be enough to justify a reversal. See *People v. A Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510 (2005). The appellate court may justifiably reverse the trial court's decision only if it is "clearly evident" that the proposed relocation would be against the children's best interests or only if the record lacks evidence reasonably supporting a conclusion that the relocation would be in the children's best interests. See *Banister v. Partridge*, 2013 IL App (4th) 120916, ¶ 47. Thus, if all the appellate court can say about the decision is that its weighing of the pros versus the cons is debatable and that reasonable minds could differ as to how much weight one factor deserves compared to another factor, the appellate court's duty is to affirm the decision, and the court should reverse the decision only if it is "arbitrary." *Id.* Likewise, injustice that is merely arguable would not warrant a reversal; the appellate court would have to be able to say, without exaggeration, that the decision is "manifest[ly]" unjust—that is, clearly or obviously unjust such that no fair-minded person could agree with it. *Eckert*, 119 Ill.2d at 328. A finding of fact is contrary to the manifest weight of the evidence when,

after reviewing all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 17; *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 38. The reviewing court asks whether the trial court's findings or conclusions are against the manifest weight of the evidence, not whether the manifest weight of the evidence supported the trial court's factual findings. *Leith v. Frost*, 387 Ill.App.3d 430, 434 (4th Dist. 2008). If the record contains any evidence to support the trial court's judgment, the judgment should be affirmed. *In re Estate of Wilson*, 238 Ill.2d 519, 569 (2010); *Dept. of Transp. ex rel. People v. 151 Interstate Road Corp.*, 209 Ill.2d 471, 488 (2004), *as modified on denial of reh'g*, (April 15, 2004);

The appellate jurisprudence on this standard of review set forth in *Eckert* and *Collingbourne* is consistent with this Court's decision in *Flynn v. Cohn*, 154 Ill.2d 160, 169 (1992), in which the Court stated in a different legal context that a reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court; it is not justified in disturbing a judgment on the ground that it is against the weight of the evidence, unless it manifestly appears that this is the case. *See also West American Ins. Co. v. Yorkville Nat. Bank*, 238 Ill.2d 177, 184 (2010); *Halpin v. Schultz*, 234 Ill.2d 381, 391 (2009); *Addison Ins. Co. v. Fay*, 232 Ill.2d 446, 452 (2009); *1350 Lake Shore Assoc. v.*

Healey, 223 Ill.2d 607, 613 (2006); *Best v. Best*, 223 Ill.2d 342, 348-349(2006); *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 151 (2005). In applying the manifest weight of the evidence standard, a reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Sullivan v. Kanable*, 2015 IL App (2d) 141175, ¶ 10.

In the case at bar, the trial court issued a painstakingly thorough and well-reasoned thirteen page order discussing and weighing the evidence as it related to each of the eleven statutory factors. The trial court's order is well supported by the record evidence in this case. The trial court's order came after three days' of evidentiary hearings, including the *in camera* testimony of the older of the two children of the parties. The Trial Court also made explicit findings regarding the relative credibility of witnesses.

The Trial Court found it was in the best interests of the children to relocate with their father. The Trial Court found as follows: The parties have no family in the West Central Illinois area. (A 27). Residing with Todd and his parents would provide the children with a sense of extended family and provide a support system for Todd and the children not present in the Galesburg area. (A 27). Virginia Beach is an affluent area of about 400,000 inhabitants that is multicultural and ethnically

diverse. (A 27). All of the extracurricular activities presently enjoyed by the children would be available there, and additionally, various cultural festivals, art festivals, and concerts would be available to the children which are not available in the Galesburg area. (A 27). The employment opportunities in Virginia Beach are abundant. (A 27). Todd's expected income would be substantially higher in Virginia Beach. (A 27). In addition, the Trial Court found that there would be a fair demand for dental hygienists in Virginia Beach and the rate of compensation would be equal to or greater than that available in the Galesburg area. (A 27). The Trial Court also found Todd's assessment of the relative quality of the schools involved to be credible and accurate. (A 28). The Trial Court found that the educational opportunities and extracurricular activity opportunities were greater for the children in Virginia Beach. (A 28). The Trial Court assessed the nature of the relationships between the children and parents, and found that the history, quality and present relationship between Todd and the children is exceptional. (A 28). On the other hand, the relationship between Danielle and the children is less so, with both children opting to forgo parenting time with Danielle in certain instances. (A 28). Lucas clearly stated a reasoned and independent preference for relocation with his father. (A 29). Todd's primary motivation in seeking to relocate is to provide the children with a better quality of life and a higher standard of living than they are currently enjoying in West Central Illinois. (A 29). The trial record

contains ample evidence to support the Trial Court's findings of fact and conclusions of law.

It is readily apparent that the Appellate Court in this case merely reweighed the evidence and substituted its judgment for that of the Trial Court rather than finding a manifest injustice. Justice Schmidt agreed with the Trial Court. In dissenting, Justice Schmidt states at paragraph 44 of the opinion that "[t]he majority sidesteps our standard of review by improperly reweighing the evidence . . . . This record is devoid of any inkling that a manifest injustice occurred."

The appellate court in *In re Parentage of P.D.*, stated: "In its order … the trial court specifically mentioned the section 609.2(g) factors and weighed each one. 'It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence.'" *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 19 (citing *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (3d Dist. 1992)).

The trial court is in a much better position to assess the credibility of the witnesses in making the factual findings. *Id at* ¶ 18 (citing *In re Marriage of Pfeiffer*, 237 Ill.App.3d 510, 516 (3d Dist. 1992)(the trial court is in the best position to make fact-intensive determinations "as it has the opportunity to hear the evidence while viewing the witnesses and

their demeanor.")). "It is completely within the trial court's province as trier of fact to determine the weight to be given each witness's testimony, and this assessment will not be disturbed absent an abuse of discretion." *In re Marriage of Pfeiffer*, 237 Ill.App.3d 510, 513 (3d Dist. 1992)(citing *In re Marriage of Eltrevoog*, 92 Ill.2d 66 (1982); *Tsai v. Kaniok* , 185 Ill.App.3d 602 (1989)).

"A reviewing court may not overturn a judgment merely because it might disagree with the decision or might have come to a different conclusion if it were the trier of fact." *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2d Dist. 2007).

"A determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case-basis, depending, to a great extent, upon the circumstances of each case." *In re Parentage of P.D.*, 2017 IL App (2d) 170355 at ¶ 16 (citing *Eckert*, 119 Ill.2d at 326). As such, a comparison of the facts of one case to the facts of another is generally not helpful in determining whether the trial court's opinion is against the manifest weight of the evidence.

The Third District Appellate Court sidestepped the standard of review in this case, without the benefit of having been able to observe, assess and evaluate the parties' credibility, temperaments, personalities,

and capabilities, and simply substituted its judgment for that of the Trial Court.

III. Conclusion and Prayer for Relief.

The Appellate Court lacked jurisdiction to decide this appeal, as the Trial Court order – expressly reserving two issues integral to and intertwined with the relocation claim – is not a final order. There is no Rule 304(a) finding. Rule 304(b)(6) does not apply to relocation judgments. Even though the opinion does modify the allocation of parental rights of the parties, it is fundamentally a relocation judgment. No other Rule affords appellate jurisdiction in this case. Accordingly, the appeal should be dismissed for lack of appellate jurisdiction.

Should the Illinois Supreme Court find it has jurisdiction, it should exercise it to reverse the Appellate Court and affirm the Trial Court. A reviewing court must not simply substitute its judgment for that of the trial court in relocation cases. The trial court order in this case cannot be characterized as clearly against the manifest weight of the evidence, because the trial court's findings and conclusions are amply supported by record evidence and are not indisputably erroneous.

Wherefore, Todd Fatkin respectfully prays that the Illinois Supreme Court dismiss the appeal, or in the alternative, reverse the Appellate Court and affirm the Trial Court.

Dated: July 13, 2018.

Respectfully submitted,

TODD FATKIN, Respondent-Appellant

By: /s/ Daniel S. Alcorn
One of his Attorneys

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309-345-0000
dalcorn@alcornnelson.com
Attorneys for Respondent-Appellant, Todd Fatkin

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned hereby certifies that a copy of this Brief of Appellant Todd Fatkin, was filed in electronic format with this attached Certificate of Service and the below parties were included in that filing via email, all sent to the Supreme Court of Illinois for e-filing on July 16, 2018, and sent by US mail to the parties below, addressed as follows:

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Amicus Curiae

/s/Daniel S. Alcorn
Daniel S. Alcorn

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309-345-0002
dalcorn@alcornnelson.com

CERTIFICATE OF COMPLIANCE

I certify that this Brief of Appellant Todd Fatkin conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 33 pages.

/s/ Daniel S. Alcorn
Daniel S. Alcorn

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ALCORN NELSON LLC
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Attorney for Respondent-Appellant
Todd Fatkin

RULE 342 APPENDIX

RULE 342 APPENDIX – TABLE OF CONTENTS

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IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	Case No. 14-D-96
	)	
	)	
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

FINAL ORDER ON CUSTODY AND VISITATION

This cause coming on for contested hearing on the issues of custody and visitation involving the parties' minor two children; the Court having heard the testimony of the parties and their respective witnesses and having examined the other evidence introduced; Petitioner represented by Ashley M. Worby of Statham & Long, LLC, and Respondent represented by Alcorn Karlin LLC; and the Court being fully advised in the premises, all provisions hereof being based on the best interests of the parties' children and on the Court's findings as set forth in its letter opinion of May 11, 2015, IT IS HEREBY ORDERED AS FOLLOWS:

I. Custody

1. The parties are awarded joint custody of the parties' two minor children. Primary physical placement of the children shall be with Father.

2. The parties shall consult with each other in making significant decisions regarding the children related to medical, educational, religious and extracurricular issues.

3. Father is designated the parent who will make decisions regarding the children in the event the parties are not able to come to a timely agreement on medical, educational, religious, and extracurricular issues.

4. The parties shall consult with each other in making significant decisions regarding the children related to the following issues:

a. Discipline.

b. Spending habits, including allowances.

c. Selection of suitable reading material, social media, applications, motion pictures, video games and television and radio programs.

d. Social activities, including dating.

e. Driving privileges, including use of the family car and purchase of a vehicle for use by a child.

f. The operation or the prohibition against operating a motorcycle, motorboat, airplane or snowmobile.

g. Consumption of tobacco.

h. Foreign travel, including the issuance of a passport.

i. Participation in hazardous activities.

j. Hygiene and whether the child should have a tattoo or body piercing.

II. Parenting Time

1. Beginning with the first Monday following entry of this Order, the parties shall have parenting time with the children during the school year in each two week time period, as follows:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	Mother	Mother	Father	Father	Father	Father	Father
Week 2	Mother	Mother	Father	Father	Father	Mother	Mother

2. To carry out the schedule set forth in Paragraph 1 above, the parties shall exchange the children as follows:

a. Monday mornings: When Father has had the children on Sunday, Father

shall drop the children off at school or daycare in the morning before Father goes to work. When Mother has had the children on Sunday, Mother shall drop the children off at school or daycare in the morning before Mother goes to work.

b. Wednesday mornings: Mother shall drop the children off at school or daycare before Mother goes to work.

c. Wednesday, Thursday and Friday afternoons: Mother shall pick up the children after school and shall have them in her care until Father is able to pick them up from Mother after he returns from work. If Mother is unable to pick up the children, she shall give Father reasonable notice so that Father can make other arrangements for after-school care. If Father is able to pick the children up from school, he shall do so upon reasonable notice to Mother

d. Every other Saturday: The parties shall exchange the children at 9 a.m. every other Saturday, with Mother picking the children up from Father.

3. In addition to the times set forth in paragraphs 1 and 2 above, the parties shall have parenting time with the children on holidays and special occasions as follows:

a. With Mother in odd-numbered years and with Father in even numbered years:

1. Labor Day
2. Halloween
3. Christmas Day
4. New Year's Day

b. With Mother in even-numbered years and with Father in odd-numbered years:

1. Independence Day
2. Memorial Day
3. Thanksgiving Day
4. Christmas Eve
5. New Year's Eve
6. Easter Sunday

c. The children shall be with Father on Father's Day and with Mother

on Mother's Day.

d. The children shall be with Father on Father's birthday and with Mother on Mother's birthday.

e. The children's birthdays shall be celebrated with the parent who has the child during his or her normal scheduled parenting time, except that the other parent shall be given an opportunity to visit with the child for a reasonable period of time that day as well.

4. Summer Vacation Time:

a. Mother and Father shall split the summer as equally as possible by alternating one-week periods of parenting time with each parent. However, each parent shall have a period of two weeks during the children's summer school vacation. The two week periods shall fall between the period of one week after the end of school and one week before the beginning of the next school year. The parents shall make reasonable efforts to plan the summer schedule at least 30 days prior to the last day of school each year. However, if that is not possible, each parent shall designate his or her two week period by not less than 30 day's notice by one parent to the other. During each parent's two week period, the children shall be under the exclusive care and supervision of the parent exercising parenting time, without the other parent intervening (except as provided in Paragraph 3 above with regard to holiday and special occasions), or unless the parties agree between themselves for deviation from this provision. The first parent to designate his or her two week period each calendar year shall take precedence in scheduling for that summer.

b. Summer of 2015. The parties shall have parenting time with the children during the Summer of 2015 as follows:

1. May 31 – June 7: Father
2. June 7 – June 14: Mother
3. June 14 – June 21: Father
4. June 22 – July 3: Mother's two week period
5. July 3 – July 10: Father
6. July 11 – July 17: Mother
7. July 18 – August 1: Father's two week period
8. August 2 – August 9: Mother

5. The parties shall adhere to the following rules with respect to the

custody of and parenting time with the minor children:

a. Each parent shall refrain from discussing the conduct of the other parent in the presence of the children except in a laudatory or complimentary way.

b. Under no circumstances shall the question of child support either as to amount, manner, or transmission of payment, be raised in the presence of the children.

c. Parenting time with the minor children shall not be withheld because of the nonpayment of child support. The payment of child support shall not be withheld because of the refusal of either party to grant parenting time.

d. Each party shall prepare the children both physically and mentally for parenting time with the other party. The children shall be available at the time mutually agreed upon between the parties for the beginning of parenting time.

e. Each party shall advise the other party as soon as possible, if they are unable to keep a planned period of parenting time with the children.

f. The parties shall work with one another to arrange visitation schedules which shall take into account the children's educational, athletic and social activities. Each party may take the children to appropriately planned activities.

g. Both parents shall, at all times, conduct themselves in a manner which promotes the beneficial effect on the minor children.

6. Jordan or International Travel. Neither parent shall take the children or either of them to Jordan or any other international destination without the prior written permission of the other parent or an order of court. Any disagreement along these lines between the parties which cannot be resolved by the parties themselves shall first be submitted by either party to mediation as set forth below in paragraph V of this order. Any disagreement along these lines which cannot be resolved with the assistance of mediation, may be submitted to the court for resolution.

III. Education

1. Each party shall take the necessary actions with the school authorities of the school in which each child is enrolled to:

a. List each party as a parent of the child;

b. Authorize the school to release to either party any and all information concerning the child;

c. Insure that each party receives copies of any notices regarding the child;

d. Each party shall promptly transmit to the other any information received concerning parent-teacher meetings, school club meetings, school programs, athletic schedules and other school activities in which the children may be engaged or interested;

e. Each party shall promptly, after receipt of the child's grade card report card and copies of any other reports concerning the child's status or progress, furnish a copy of the same to the other parent.

f. Each party shall when possible arrange appointments for parent-teacher conferences at a time when both parties can be present and whenever possible they shall be attended by both parents.

IV. Medical and Healthcare

1. Each party shall promptly inform the other of any serious illness of either child which requires medical attention. Elective surgery shall be performed only after consultation with the other party. Emergency surgery necessary for the preservation of life or to prevent further serious injury or condition may be performed without consultation with the other parent provided, however, that if time permits, the other parent shall be consulted and in any event informed as soon as reasonably possible.

2. Both parents shall inform each other of any medical or health problems which arose while they had physical custody of the children when the information of said medical or health problem would aid the other parent in the

care and treatment of the children. Both parents shall provide each other with any medications which the children are taking at the time of the transfer of parenting time and with sufficient information to allow the parent assuming parenting time to obtain refills of that medication.

4. Both parents shall, when requested, provide information to the other parent regarding the names, addresses, telephone numbers, and other necessary facts concerning the providers of any medical or health care to the children.

5. The parents shall at all times conduct themselves in a manner which promotes the cooperation and involvement of the other parent on any matters which concern the medical and health care of the children, keeping in mind that the cooperation and involvement of both parents on issues regarding medical and health care of the child is in the best interests of the children.

V. Mediation of Conflicts

If any conflicts arise between the parties as to any of the provisions of this Order or the implementation thereof, the complaining parent shall first notify the other parent of the nature of the complaint, and both parents shall make reasonable attempts to negotiate a settlement of the conflict. This shall include the use of a trained third-party mediator as required under Supreme Court and Ninth Judicial Circuit Rules.

VI. Miscellaneous

This is a final order on custody and visitation relating to the parties' children for purposes of any future modification under 750 ILCS 5/607 and 6/610 of the Illinois Marriage and Dissolution of Marriage Act.

DATED: 7/16, 2015.

ENTER: _____
Judge

FILED
KNOX CO., IL
JUL 16 2015
KELLY CHEESMAN
Clerk of the Circuit Court
_____ Deputy

APPROVED AS TO FORM:

Attorney for Respondent/Father

Attorney for Petitioner/Mother

Daniel S. Alcorn
ALCORN KARLIN LLC
313 E. Main Street
P.O. Box 1516
Galesburg, Illinois 61401
(309) 345-0000
(309) 345-0002 (fax)

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	Case No. 14-D-96
	)	
	)	
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

NOTICE OF INTENT TO RELOCATE
[Pursuant to 750 ILCS 5/609.2(c)]

To: Danielle Fatkin, Petitioner
208 S Broad St
Knoxville, IL 61448

To: Mr. Dan Cordis, Esq.
Cordis & Cordis
129 N. Walnut
PO Box 445
Princeville, IL 61559-0445

Now comes Todd Fatkin, by and through his attorney Daniel S. Alcorn of ALCORN NELSON LLC, and gives Notice of his Intent to Relocate pursuant to 750 ILCS 5/609.2(c), and in connection therewith, states as follows:

1. Respondent intends to relocate with the parties' children on a permanent basis.
2. The intended date of relocation is 60 days following Petitioner's receipt of this Notice of Intent to Relocate or April 14, 2017, whichever is later.

3. The address of the intended new residence is 3809 Cranberry Ct., Virginia Beach, VA. 23456.

4. The relocation is intended to be permanent.

Todd Fatkin, Respondent

By _____
Daniel S. Alcorn, One of his Attorneys

_____
Signature of Danielle Fatkin, Petitioner/Non-Relocating Parent

Subscribed and sworn to before me
This __day of _____, 2017

_____
Notary Public

Daniel S. Alcorn
ALCORN NELSON LLC
313 E. Main Street
Galesburg, IL 61401
Telephone: (309) 345-0000
Telefax: (309) 345-0002
dalcorn@alcornnelson.com

PROOF OF SERVICE AND FILING

The undersigned hereby certifies that he served Petitioner with a true and correct copy of the above NOTICE OF INTENT TO RELOCATE in the above case by placing same in an envelope addressed as follows:

Danielle Fatkin
208 S. Broad St.
Knoxville, IL 61448

And

Mr. Dan Cordis, Esq.
Cordis & Cordis
129 N. Walnut
PO Box 445
Princeville, IL 61559-0445

with sufficient postage affixed thereto, and depositing same in a United States mail box in Galesburg, Illinois at 5:00 P.M. on February 10, 2017.

The undersigned hereby further certifies that he filed the above NOTICE OF INTENT TO RELOCATE with the Clerk of the Circuit Court on the same date.

DANIEL S. ALCORN
Attorney for Respondent

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT OF ILLINOIS
KNOX COUNTY

IN RE THE MARRIAGE OF:	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No: 14 D 96
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

OBJECTION TO RELOCATION

NOW COMES the Petitioner, DANIELLE FATKIN, by her counsel, DANIEL M. CORDIS of CORDIS & CORDIS, and pursuant to 750 ILCS 5/609.2(f) hereby objects to the Notice of Intent to Relocate filed and served by the Respondent, TODD FATKIN

Dated: February 24, 2017

Respectfully submitted,

DANIELLE FATKIN, Petitioner

By: _____
DANIEL M. CORDIS, Attorney

CORDIS & CORDIS
129 N. Walnut Avenue
P. O. Box 445
Princeville, Illinois 61559
309.385.4616 (t)
309.385.0054 (f)
dcordis@cordislaw.com

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated: February 24, 2017

Danielle Fatkin
DANIELLE FATKIN

CERTIFICATE OF SERVICE

I, Daniel M. Cordis, an attorney, hereby certify that ~~February~~ March 1, 2017, I caused a copy of the foregoing ***Objection to Relocation*** to be served by United States Mail, deposited in Princeville, Illinois, with postage fully-prepaid and plainly addressed to the following individual:

Daniel S. Alcorn
Alcorn Nelson LLC
313 E. Main Street
Galesburg, Illinois 61401

Daniel M. Cordis

CORDIS & CORDIS
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Princeville, Illinois 61559
309.385.4616 (t)
309.385.0054 (f)
dcordis@cordislaw.com

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	Case No. 14-D-96
	)	
	)	
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

RESPONDENT'S PETITION FOR LEAVE TO RELOCATE WITH THE MINOR CHILDREN OF THE PARTIES FROM THE STATE OF ILLINOIS

NOW COMES, the Respondent/Father, Todd Fatkin, by and through his attorney, Daniel S. Alcorn of ALCORN NELSON LLC, and in support of his Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois, states as follows:

1. A Judgment of Dissolution of Marriage was entered in the above-captioned case on June 10, 2016.

2. Pursuant to the terms of the Judgment, the parties were awarded joint custody of the minor children: L.S.F., d.o.b. 12/18/2004 and L.G.F., d.o.b. 11/10/2010; and Respondent/Father was awarded the majority of the parenting time with the children along with final decision-making on major issues concerning the children.

3. Father seeks, in good faith, to move with the children to Virginia Beach, Virginia to live with his parents.

4. Father believes that it is in the best interest of the minor children to move to Virginia Beach, Virginia for the following reasons:

a. Said removal shall enhance the general quality of life for both father and the children, benefiting the children directly and indirectly;

b. Said removal shall enhance the general economic well-being for both Father and the children, benefiting the children directly and indirectly;

c. The educational opportunities available to the children in Virginia Beach, Virginia will be greater than those available in Knox County, Illinois;

d. Said removal will benefit both the children and Father in that the medical/hospital care facilities in Virginia Beach, Virginia are closer, more plentiful and offer higher quality of care.

e. The children have extended family in Virginia Beach, Virginia, in that they would be living with their paternal grandparents;

f. Lucas, age 12, wishes to move with Father to Virginia Beach, Virginia and has mature reasoning behind his desire;

g. All other statutory and relevant factors favor the granting to leave to Respondent/Father to relocate as proposed.

5. Father has complied with 750 ILCS 5/609.2(c)&(d) regarding notice to Petitioner of relocation; but Petitioner/Mother has objected to the proposed relocation.

WHEREFORE, the Respondent/Father, Todd Fatkin, by and through his attorney, Daniel S. Alcorn of ALCORN NELSON LLC, respectfully requests this Court to enter an order pursuant to 750 ILCS 5/609.2 granting him the right

to relocate with the minor children from the State of Illinois; and that the Court make other arrangements to amend the order regarding allocation of parental rights and responsibilities to, among other things, facilitate parenting time between the children and Petitioner/Mother after the allowance of such relocation.

Respondent/Father, TODD FATKIN,

By: _____
Daniel S. Alcorn

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Todd Fatkin

Subscribed and sworn to before me
this 1st day of June, 2017.

Notary Public

OFFICIAL SEAL
MARCELLA S. ALCORN
NOTARY PUBLIC-STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-15-2021

Daniel S. Alcorn
ALCORN NELSON LLC
313 E. Main Street
Galesburg, IL 61401
Telephone: (309) 345-0000
Telefax: (309) 345-0002
dalcorn@alcornnelson.com

CERTIFICATE OF SERVICE

The undersigned certifies that on the 1st day of June, 2017, I served a copy of the foregoing instrument upon:

To: Danielle Steen Fatkin
c/o Mr. Dan Cordis, Esq.
Cordis & Cordis
129 N. Walnut
PO Box 445
Princeville, IL 61559-0445

by:

X U.S. Mail
Hand Delivered
Certified Mail

Fax
Overnight Carrier
Other: _____

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT OF ILLINOIS
KNOX COUNTY

IN RE THE MARRIAGE OF:	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No: 14 D 96
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

RESPONSE IN OPPOSITION TO PETITION FOR LEAVE TO RELOCATE WITH THE MINOR CHILDREN OF THE PARTIES FROM THE STATE OF ILLINOIS

NOW COMES the Petitioner, DANIELLE FATKIN ("DANIELLE"), by her counsel, DANIEL M. CORDIS of CORDIS & CORDIS, and respectfully responds in opposition to the Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois ("Petition to Relocate") filed by the Respondent, TODD FATKIN ("TODD"). In support hereof, DANIELLE states as follows:

1. Admitted.

2. Admitted that the parties were awarded joint custody but that there is also language in the Final Order on Custody and Visitation making reference to TODD being entitled to make medical, educational, religious and extracurricular decisions for the minor children in the event of disagreement between the parties.

3. Neither admitted nor denied due to a lack of personal knowledge as to TODD's intentions to live with his parents in Virginia Beach. Further answering, the children have not been to Virginia Beach, as far as DANIELLE is aware, since Thanksgiving 2013.

4. Neither admitted nor denied due to a lack of personal knowledge as to TODD's

beliefs as to the best interests of the children. With regard to sub-paragraphs 4a – g, which are legal conclusions lacking any detailed factual allegations, DANIELLE neither admits nor denies but demands strict proof thereof.

5. Admitted.

WHEREFORE, the Petitioner, DANIELLE FATKIN, respectfully requests entry of an Order: (a) denying the Petition to Relocate in its entirety; and (b) granting such other and further relief as this Court deems just and proper.

Dated: August 29, 2017

Respectfully submitted,

DANIELLE FATKIN, Petitioner

By: _____
One of her Attorneys

Daniel M. Cordis
CORDIS & CORDIS
129 N. Walnut Avenue
Princeville, Illinois 61559
309.385.4616 (t)
309.385.0054 (f)
dcordis@cordislaw.com

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated: August 29, 2017

Danielle Stoan Fatkin

DANIELLE FATKIN

CERTIFICATE OF SERVICE

I, Daniel M. Cordis, an attorney, hereby certify that August 29, 2017, I caused a copy of the foregoing **Response in Opposition to Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois** to be served by facsimile and United States Mail, deposited in Princeville, Illinois, with postage fully-prepaid and plainly addressed to the following individual:

Mr. Daniel S. Alcorn
Alcorn Nelson LLC
313 E. Main Street
Galesburg, Illinois 61401
309.345.0002 (f)

Daniel M. Cordis

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT

KNOX COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:	)	
	)	
DANIELLE FATKIN,	)	
	)	
Petitioner,	)	
vs.	)	Case No. 14-D-96
	)	
TODD FATKIN,	)	
	)	
Respondent.	)	

ORDER GRANTING RESPONDENT'S PETITION FOR LEAVE TO RELOCATE WITH MINOR CHILDREN FROM THE STATE OF ILLINOIS

This matter came before the Court for purposes of a hearing on the Respondent's Petition for Leave to Relocate with the Minor Children from the State of Illinois, filed June 5, 2017, and both parties being present and represented by their respective counsel of record and the Court having heard and received the testimony and evidence of record now finds, as follows:

1. This Court has jurisdiction over the parties and subject matter herein.

2. The marriage of the parties was dissolved by a Judgment of Dissolution of Marriage entered by this Court on June 10, 2016. Previously, on July 16, 2015, a Final Order on Custody and Visitation had been entered.

3. Pursuant to the Judgment and Final Order on Custody and Visitation, it was found that two children were born to the parties, L.S. F., date of birth, 12/18/2004, and L.G. F., date of birth, 11/10/2010.

4. Pursuant to the Judgment and Final Order on Custody and Visitation, the parties were awarded joint custody of the minor children with primary physical placement of the children being with the father. The parties were ordered to consult with each other in making significant decisions regarding the children related to medical, educational, religious and extracurricular activities, but the father was further designated as the parent who would make decisions regarding the children in the event the parties were not able to come to a timely agreement on such medical, educational, religious and extracurricular activities.

5. On February 10, 2017, the Respondent/father filed a Notice of Intent to Relocate pursuant to 750 ILCS 5/609.2(c).

6. On March 6, 2017, the Petitioner/mother filed her Objection to Relocation.

7. On May 2, 2017, among other issues, the parties were ordered to mediation on the issue of relocation. Subsequently, mediation was terminated without an agreement being reached by the parties on the issue of relocation.

8. On June 5, 2017, the Respondent/father filed his Respondent's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois and on August 29, 2017, the Respondent/mother filed her Response in Opposition to Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois.

9. In the case at hand, the Respondent/father has met the procedural steps necessary for relocation to take place. On February 10, 2017, the Respondent/father filed a Notice of Intent to Relocate pursuant to 750 ILCS 5/609.2(c). On March 6, 2017, the Petitioner/mother filed her Objection to Relocation. The parties were ordered to mediation, attended mediation and mediation was terminated without an agreement being reached by the parties on the issue of relocation. On June 5, 2017, the Respondent/father filed his Respondent's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois and the matter proceeded to trial in August and October of 2017.

10. Over the course of three days of hearing on August 30, 2017, October 10, 2017, and October 25, 2017, which included testimony from both parties, as well as an in camera interview of the oldest child of the parties, L.S. F., the Court received all the evidence presented by the parties in support of and in opposition to the Respondent's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois.

11. The following findings and evidence of record has factored into the Court's determination as to whether or not to grant or deny the petition to relocate:

a. Todd Fatkin and Danielle Fatkin are the parent of Lucas and Lillian. Lucas is 13 years of age and Lilly will turn age 7 on November 10th.

b. Pursuant to decision by this Court the parties were awarded joint custody of Lucas and Lillian with primary physical placement of the children being with Todd. Relative to parenting time, Todd is the parent with the majority of parenting time with Todd enjoying parenting time 8 days and nights out of 14, and Danielle, conversely enjoying 6 days and nights out of 14. In the summer time when school is not in session the parties' alternate parenting with the children 1 week on, 1 week off.

c. Relative to exercise of parental responsibilities, this Court previously determined, that the parties were ordered to consult with each other in making significant decisions

regarding the children related to medical, educational, religious and extracurricular activities, but Todd was further designated as the parent who would make decisions regarding the children in the event the parties were not able to come to a timely agreement on such medical, educational, religious and extracurricular activities.

d. Todd currently resides at in East Galesburg, Illinois, and has so for the last 6 to 7 years. He is currently employed by the Galesburg Police Department as a community services officer which is a position that is budgeted for annually by the City for 1,000 hours. Todd is paid at the rate of $12.00 per hour and receives no benefits. Todd's annual employment begins in April of each year and continues until the 1,000 hours are exhausted. Stated differently, Todd is paid $12,000 a year for 1,000 hours of work. In addition to this income, Todd also receives the sum of $508 per month in child support from Danielle.

e. Todd has a Bachelor of Arts degree in Fine Arts, a Dental Hygienist Associates Degree and is licensed as a dental hygienist in Illinois and Virginia. He also been schooled and taught in a Montessori setting.

f. From 2011 to 2015, Todd was employed as a dental hygienist primarily in Peoria, Illinois and for a short period of time in Moline, Illinois. As dental hygienist he earned approximately $50,000 per year. Todd testified he left employment in Peoria over ethical concerns with his employer and ceased employment with his Moline employer as it was not a good fit. Mother's counsel on cross examination attempted to establish that Todd was terminated from both employers due to inappropriate misconduct, but the end result is that Todd has not been employed as a dental hygienist since 2015, despite attempting to find employment in that field in the immediate Galesburg, Illinois area.

g. Danielle resides in Knoxville, Illinois, approximately 2 miles away from Todd's residence. Danielle is currently employed as a professor at Knox College in Galesburg, Illinois. She earns approximately $52,000 per year. She is not tenured, but has a contract until 2020. If she is not tenured by the Spring of 2019, her employment with Knox College will cease with the termination of her contract in 2020. Danielle is involved in a relationship with a James Hudson who resides in Knoxville, Tennessee. Contrary to what Lucas advised in his in camera interview, Danielle denies that she has had conversations about relocating to Knoxville, Tennessee.

h. Lucas and Lillian are currently enrolled and have been for sometime in the Knoxville school system. Lucas is in 7th grade and Lilly is in 1st. Lilly is doing "great" in school, but Lucas has struggled in the recent past with "Bs", "Cs", and "Ds". Both children are involved in extracurricular activities, such as piano, drum, jazz band, hockey, soccer, swimming, baseball, tennis, gymnastics, ballet, horseback riding and 4H. Both Todd and Danielle actively participant with the children in these activities with the children. Danielle has served as a soccer coach and as a room mother for

both children, and has been a group leader for 4H activities. Both children's social development and interaction is appropriate. However, Danielle testified that Lucas has expressed concerns to her that at school he has been bullied, name called, such as "girl" and "jew" and shamed that he doesn't play football. Todd also expressed concerns about the lack of cultural and ethnic diversity in the Knoxville school system.

i. Neither Todd nor Danielle has any family in the Galesburg or West Central Illinois area. The parties' original and only tie to the Galesburg area was Danielle's employment prospects at Knox College which began in 2008.

j. The intended relocation spot is 3809 Cranberry Court in Virginia Beach, Virginia. It is the home of Todd's parents. Todd would live there rent free. The home is a 4 to 5 bedroom home that would provide each child with a separate bedroom. It is 8 miles from the ocean front and a few miles by bus from the children's intended schools. Todd's parents are financially secure and Todd would live there rent free.

k. Todd's father is age 66 or 67 and is in good health. Todd's mother is age 66 or 67 and is not in good health. She is in Stage 5 renal failure. In residing with Todd's parents such residency would provide the children with a sense of extended family relocation and would also provide a support system for Todd and the children that is not present in the Galesburg area.

l. The Virginia Beach area is an affluent area of about 400,000 inhabitants that is multicultural and ethically diverse. All extracurricular activities that the children presently engage in are available in Virginia Beach. In addition, based upon its size, various cultural festivals, art festivals, and concerts are available that would not be available to the children in their present location.

m. The employment opportunities for Todd in the Virginia Beach area are abundant. Presently, Todd has a letter of intent from REI for employment at its Virginia Beach location. REI sells recreational equipment. Todd has previously been employed by REI. Under his letter of commitment, Todd's of hourly pay would be in the range of $9.50 to $16.50 per hour with the opportunity to gain benefits and a rolling average of 20 hours per week. Assuming at a minimum of 20 hours per week for 52 weeks at the medium rate of $13.00 per hour, Todd's anticipated annual income would then be $13,520, per year which would be greater than the $12,000 per year, he is currently earning, with no benefits, at his present location. In addition, Todd is licensed as a dental hygienist in Virginia and testified to a desire to become employed in that capacity. One can certainly draw the inference that there would be a fair demand for dental hygienists in the Virginia Beach area with 400,000 inhabitants and that the rate of compensation would be at least equal to if not more that what Todd had enjoyed in the past when he was employed in the present location of $50,000 per year.

n. In addition to the economic opportunities that Virginia Beach offers, medical benefits

may be derived by Todd as a result of relocation. Todd is a veteran of the U.S. Coast Guard. As such, he qualifies for V.A. medical care. Presently, the V.A. care available to Todd in the present location is limited to the drawing of blood and physicals. More advanced care requires Todd to travel approximately 2 hours away to Iowa City, Iowa. Virginia Beach however is in close proximity to Norfolk, Virginia, approximately 20 miles. Norfolk is home to Naval Station, Norfolk, which is the U.S. Navy's largest naval base. V.A. care provided in Norfolk is certainly more comprehensive than that offered in Todd's present location and minutes away as compared to hours.

o. Relative to medical care for Lucas and Lilly. Lucas presents with scoliosis and presently is under care from a physician in Peoria, Illinois. Lilly appears in general good health. There is a suggestion of record through Todd's testimony that the quality of medical care for the children would be enhanced if relocation to Virginia Beach was granted. This suggestion appears to be based upon a notion of the larger population base, the greater enhanced medical care. While such a proposition has some intuitive appeal, objectively there is insufficient evidence of record to support such a proposition. Available and adequate medical care for the children appears to be present at either the children's present location or the proposed relocation site.

p. If relocation was granted, the children would attend Landstown Elementary and Jr. High respectfully. The schools for the children would be approximately a few miles away by way of bus. Todd grew up in Virginia Beach and attended schools in Virginia Beach. Based upon his own experiences and the research that he has done, Todd testified that the schools the children would attend are far more multicultural and ethically diverse than the Knoxville school system. Todd was also of the opinion that all of the extracurricular activities that the children enjoy and more are available to Lucas and Lilly in Virginia Beach. On this issue the Court finds Todd's assessment and opinion to be credible and accurate.

q. The history, quality and present relationship between Todd and Lucas and Lilly is exceptional. The history, quality and present relationship between Danielle and Lilly is good, however, as it relates to Lucas such relationship presents as strained and somewhat tenuous. With both children, whereas, Danielle used to see the children on a daily basis, such contact recently has been diminished. By way of example, given a choice between going to his mother's after school until such time as his father would be home, Lucas has chosen to go to his father's residence rather than spend that time with his mother. In like fashion, whereas in the past Lilly had gone to her mother's in the afternoons before her father was off work, recently Lilly has chosen to go to PALS, an after school care program, rather than going to her mother's.

r. The in camera interview of Lucas also clearly illustrated the nature and extent of the relationship that Lucas has with each parent. While expressing his love for both parents, Lucas clearly views Todd and the more caring, understanding and nurturing

parent, as compared to Danielle whom he finds to be confusing, arbitrary and withdrawn at times. Lucas clearly stated his preference for the granting of the petition for relocation and did so as extremely articulate, mature 13 year old who expressed reasoned and independent preferences as to relocation.

s. Todd testified his primary motivation in seeking relocation is to provide the children with a better quality of life and a higher standard of living than they currently enjoying in West Central Illinois. Todd asserts that a better quality of life and higher standard of living in Virginia Beach is related to the factors of: (a) his employment would be more stable; (b) his employment would be at a higher rate of annual income than present; (c) the schools of Virginia Beach are superior to those of the Knoxville School System; (d) Virginia Beach is a more culturally and ethnically diverse area as compared to the Knoxville area and the West Central Illinois region; (e) there are greater opportunities available to the children in the fields of arts, science, and athletics in the Virginia Beach area; and (f) the children would be residing with him in his parents' home, thereby providing the children with the opportunity to have a sense of extended family which is non-existent now.

t. Danielle stated oppositions to relocation is that she has been part of the children's life every day since they have been born; that since the divorce she has made them a priority and to not be involved in the day to day aspects of child raising would be devastating; and that she is part of their lives.

12. Prior to 2016, Section 609 of the Illinois Marriage and Dissolution of Marriage Act allowed a trial court to grant a custodial parent permission to remove a minor child from the state of Illinois when it was in the child's best interests. The parent seeking removal had the burden of proving, by a preponderance of the evidence that removal would be in the child's best interest.

13. However, in 2016, the Illinois Marriage and Dissolution of Marriage Act, was amended as set forth in 750 ILCS 5/609.2. While the former Act only required court permission to move a child to a new residence outside the state, the new Act drew the line of demarcation in miles, not boundaries and provides specific procedural requirements and is stricter in a number of respects.

14. Section 609.2 has specific applicability to those circumstances under which a parent who has been awarded a majority of or equal parenting time seeks to relocate with a child and change the child's current primary residence by greater than 50 miles. Under the new law, if the other parent objects to relocation, the relocating parent must have court permission to move a child more than 50 miles from his or her current residence and a court may modify the existing custody and visitation order or parenting plan or allocation judgment only if it is in the child's best interests.

15. In determining if relocation is in the child's best interest, the Act sets forth the following statutory factors that the trial court is to consider in making such a determination:

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

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

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

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

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

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

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

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

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

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

(11) any other relevant factors bearing on the child's best interests."

750 ILCS 5/609.2(g).

16. In determining if relocation is in the parties' children's best interest, the Court has considered the following statutory factors and the evidence of record relative to those statutory factors in making its determination:

(1) *the circumstances and reasons for the intended relocation;* Todd's reasons for the intended relocation are not improper, nor motivated by a desire to lessen Danielle's role in the life of Lucas or Lilly. Todd has articulated a reasonable and rational basis for his request for relocation. Todd's primary motivation in seeking relocation is to provide the children with a better quality of life and a higher standard of living than they currently enjoying in West Central Illinois. Todd believes that a better quality of life and higher standard of living in

Virginia Beach is related to the factors of: (a) his employment would be more stable; (b) his employment would be at a higher rate of annual income than present; (c) the schools of Virginia Beach are superior to those of the Knoxville School System; (d) Virginia Beach is a more culturally and ethnically diverse area as compared to the Knoxville area and the West Central Illinois region; (e) there are greater opportunities available to the children in the fields of arts, science, and athletics in the Virginia Beach area; and (f) the children would be residing with him in his parents' home, thereby providing the children with the opportunity to have a sense of extended family which is non-existent now. Todd's reasons for the intended relocation are not improper and they are reasonable and rationally based.

(2) *the reasons, if any, why a parent is objecting to the intended relocation;* Danielle is not objecting to the relocation for purposes of simply being an obstructionist. Danielle presents in good faith her concerns that relocation would lessen her share of parental responsibilities and day to day parenting time she currently exercises with the children. Danielle's reasons for objecting to the intended relocation are also not improper and they are also reasonable and rationally based.

(3) *the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;* Both parents have exercised their respective parental responsibilities and parenting time. Neither parent has substantially failed or refused to exercise the parental responsibilities allocated to them under the Final Order on Custody and Visitation. The history and quality of Todd's relationship with Lucas and Lilly is exceptional. The history and quality of Danielle's relationship with Lilly is good. However, as it relates to Lucas, Danielle's relationship with Lucas presents as strained and somewhat tenuous. There is also a concern in the mother/children relationship that at times the mother can be confusing, arbitrary, withdrawn and attempts to distance herself from the children.

(4) *the educational opportunities for the child at the existing location and at the proposed new location;* The academic educational opportunities for the child at the children's present location, Knoxville, Illinois and the proposed new location, Virginia Beach, Virginia are difficult to be adequately determined by the Court. Academically, there is no objective evidence of record to allow a qualitative assessment. However, educational opportunities also involve societal factors. There is evidence of record of Lucas being subject to bullying of racial, religious or a machismo nature while at school. Such bullying is always based upon ignorance and almost always the product of a community that lacks cultural or racial diversity. In this respect, the schools system in

Virginia Beach based upon its diversity would appear to be superior to that of the children's current district.

(5) *the presence or absence of extended family at the existing location and at the proposed new location;* There is the absence of extended family at the existing location of the children. Todd and Danielle are not from the West Central Illinois area. At the proposed new location extended family would be present in the form of the children's paternal parents. Lucas and Lilly would live with their dad, with his parents, their grandparents in grandma's and grandpa's home.

(6) *the anticipated impact of the relocation on the child;* The anticipated impact of relocation upon the children would be of a varying degree between Lucas and Lilly. For Lucas the impact of relocation however, may not be of a significant level as he has specifically stated a preference for residing with his father whom he views as the more stable, nurturing parent and clearly stated he could adapt to not seeing his mother at the current level. For Lilly the impact maybe more manifest, as it appears from the testimony that Lilly has a stronger bond with her mother than Lucas does.

(7) *whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;* A reasonable allocation of parental responsibilities between all parents can be fashioned if the relocation occurs. Along these lines, the Court sees no need to vary or alter the current division of parental responsibilities as it now stands. The parties were ordered to consult with each other in making significant decisions regarding the children related to medical, educational, religious and extracurricular activities, but the father was further designated as the parent who would make decisions regarding the children in the event the parties were not able to come to a timely agreement on such medical, educational, religious and extracurricular activities. This should remain in full force and effect. Moreover, from a practical standpoint, a proper division of holiday and summer parenting time will, *de facto* bring about a reasonable allocation of day to day parental responsibilities among the parties. When the children are with Todd he will responsible for the day to day oversight responsibilities for Lucas and Lilly. Conversely, when the children are with Danielle for her extended parenting in the summer months and holidays she will be responsible for the day to day oversight. The effect of such a division is that the children will observe and learn that on significant decisions regarding them related to medical, educational, religious and extracurricular activities, their parents consult, but on day to day operations, it is the parent with whom they are with, decides. Under such an allocation of parental responsibility the children will know that both parents are intimately involved in their life and in determining their well being.

(8) *the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;* Taking into account each child's maturity and ability to express reasoned and independent preferences as to relocation, only the wishes of Lucas can be considered. In this respect Lucas clearly stated his preference for the granting of the petition for relocation and did so as an extremely articulate, mature 13 year old who expressed reasoned and independent preferences as to relocation.

(9) *possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;* Possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the children can be accomplished by the parties coordinating their efforts to include both parties at conferences or events that involve the children. Technology is such that a parent can participate and attend, events far away, albeit, physically removed, through the use of teleconferencing, Skype, instant messaging, Snapchat, cell phone and or webcams.

(10)minimization of the impairment to a parent-child relationship caused by a parent's relocation; Minimization of the impairment to the parent child relationship caused by the relocation can be accomplished again, by a proper division of holiday and summer parenting time. In addition, minimization can further be accomplished, again by the ordering and encouragement of telephonic contact, texting, Skype, Snapchat, webcam or even by the more primitive form of communication, of letter writing or sending a card.

(11) *any other relevant factors bearing on the child's best interests.*
In his in camera interview, Lucas made clear his desire to relocate with his father to Virginia Beach. In part of his explanation for why he wished to relocate, he stated his lack of understanding of his mother's opposition to such move, as he had heard her on more than one occasion discuss the possibility of her relocating to Knoxville, Tennessee, where her boy friend James Hudson resides. In opposition to what Lucas advised in his in camera interview, Danielle testified specifically that she had never had a conversation with Lucas about relocating to Knoxville, Tennessee. This discrepancy between Lucas' testimony and Danielle's is troubling to the Court and resolution of it turns upon an assessment of the credibility of the witnesses. Granted Lucas was not subject to cross examination during his interview. However, the Court had the opportunity to directly observe the demeanor of both Lucas and Danielle while testifying. The Court finds that Lucas appeared to be inherently honest and credible in his report. The Court does not believe that Lucas was simply making up hearing his mother have such discussions. Moreover, Danielle's testimony proffered to rebut Lucas' statement (that he had heard her on more than one occasion discuss the possibility of her relocating to Knoxville, Tennessee,) was not an absolute denial of any discussions with anyone, but rather

perhaps a factual accurate statement that she not had any conversation on that topic specifically and directly with Lucas. The impact of all of this is that tends to create the existence of a possible double standard on the part of Danielle relative to her opposition to relocation.

17. In further considering the petition for removal, the Court has also considered the case law prior to the enactment in 2016 of 750 ILCS 5/609.2, as one, there are no cases to the Court's knowledge that have construed what impact, if any, the 2016 changes made to existing case law, and two, such case law is instructional because the factors to consider in determining the children's best interests are essentially the same. In doing so, the Court has relied upon: ***In re Marriage of Eckert***, 119 Ill. 2d 316 (1988); ***In re Marriage of Collingbourne***, 204 Ill. 2d 498 (2003); ***In re Marriage of Pfeiffer***, 237 Ill. App. 3d 510, 516 (1992); ***In re Marriage of Demaret***, 2012 IL App (1st) 111916, 358 Ill.Dec. 87, 964 N.E.2d 756; and ***In re Marriage of Kincaid***, 2012 IL App (3d) 110511, ¶ 39, 362 Ill.Dec. 185, 972 N.E.2d 1218.

18. Removal cases are difficult. This is especially so when neither parent demonstrates bad faith and both have assiduously exercised their parental responsibilities and parenting time. No matter the outcome, one party's life will likely be affected detrimentally. In assessing the best interests of the children, no single factor is determinative on the removal question and the weight the Court has ascribes to each may varies according to the circumstances of the case at hand. In assessing best interests, the Court has kept mind two salient considerations. First, "a child has an important interest in `maintaining significant contact with both parents following the divorce.'" ***In re Marriage of Collingbourne***, 204 Ill. 2d at 522, 274 Ill.Dec.440,791 N.E. 2d 532 (quoting Eckert, 119 Ill.2d at 325, 116 Ill. Dec. 220, 518 N.E.2d 1041). Second, the quality of a child's life may be enhanced from the child's experience "stemming from the [custodial] parent's life enhancement." Id. at 526, 274 Ill.Dec. 440, 791 N.E.2d 532.

19. Taking all of the above into consideration it is the determination of the Court that the quality of life to Lucas and Lilly will be increased by the allowing of relocation and the Court finds that the granting of the removal petition is in the best interest of the children.

20. Accordingly, a proper allocation of parenting time needs to be established. The geographical distance and financial circumstances of the parties prohibit a parenting time schedule of daily, weekly or monthly parenting time. However, the finances of the parties are such that parties would be able to afford the travel for holiday and extended summer parenting time with the children.

21. The Court finds that it is in the best interests of Lucas and Lilly that upon relocation the parenting time of the parties be modified as prescribed:

a. Unless the parties agree otherwise, the Father shall have parenting time with the children at all times, except that the Mother shall have parenting time as follows:

i. Summer: Each Summer from the 7th day following the last day school recesses for the summer until the 7th day before the first day

of commencement of school in the Fall;

ii. Thanksgiving: In odd numbered years, from the Wednesday immediately before Thanksgiving until 6:00 p.m. on the Sunday following;

iii. Christmas: In even numbered years, from the first day following school is recessed for said holiday until December 26th and in odd number years from December 26th until January 2nd.

iv. Spring Break from School: In odd number years from the 1st day following school is recessed for said break until the day immediately before the resumption of school.

22. The Court notes that the granting of the petition for relocation raises the issue of the reasonable costs of transportation connected with the exercise of both parties' parenting time; and also alters the number of nights each party will have the children. As such, it is necessary that the issue of transportation costs and child support be addressed. However, the Court having not had the benefit of specific information concerning the economic circumstances of the parties makes no finding in these regards, and thereby reserving ruling on these issues for later determination by the Court, if the parties are not able to come to an agreement on these two issues.

23. It is further found that all other provisions of the Final Order on Custody and Visitation entered on July 16, 2015, and the Judgment of Dissolution of Marriage entered on June 10, 2016, not inconsistent with this Order should remain in full force and effect.

IT IS THEREFORE ORDERED, as follows:

a. The Respondent's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois is hereby granted.

b. Unless the parties agree otherwise, the Father shall have parenting time with the children at all times, except that the Mother shall have parenting time as follows:

(1) Summer: Each Summer from the 7th day following the last day school recesses for the summer until the 7th day before the first day of commencement of school in the Fall;

(2) Thanksgiving: In odd numbered years, from the Wednesday immediately before Thanksgiving until 6:00 p.m. on the Sunday following;

(3) Christmas: In even numbered years, from the first day following school is recessed for said holiday until December 26th and in odd number years from December 26th until January 2nd.

(4) Spring Break from School: In odd number years from the 1st day following school is recessed for said break until the day immediately before the resumption of school.

c. The issue of transportation costs and child support is hereby reserved.

d. All other provisions of the Final Order on Custody and Visitation entered on July 16, 2015, and the Judgment of Dissolution of Marriage entered on June 10, 2016, not inconsistent with this Order shall remain in full force and effect.

Enter: November 13, 2017

JUDGE PAUL L MANGIERI

FILED
KNOX CO., IL
NOV 13 2017
KELLY CHEESMAN
Clerk of the Circuit Court
Pamela Allen Deputy

THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a)

APPEAL TO THE ILLINOIS APPELLATE COURT
THIRD JUDICIAL DISTRICT

FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
KNOX COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:	
DANIELLE FATKIN,	
Petitioner-Appellant,	Case No: 14 D 96
vs.	The Honorable PAUL L. MANGIERI Judge Presiding
TODD FATKIN,	
Respondent-Appellee.	

NOTICE OF APPEAL

Please take notice that Petitioner-Appellant, DANIELLE FATKIN, by her attorney, DANIEL M. CORDIS of CORDIS & CORDIS, pursuant to Illinois Supreme Court Rule 304(b)(6), hereby appeals to the Illinois Appellate Court, Third Judicial District, from the order entered on November 13, 2017, by the Honorable PAUL L. MANGIERI, Judge of the Circuit Court of the Ninth Judicial Circuit, Knox County, Illinois.

In the November 13, 2017 Order, Judge Mangieri granted the Respondent-Appellee's Petition for Leave to Relocate with the Minor Children of the Parties from the State of Illinois.

By this appeal, the Petitioner-Appellant respectfully requests that the Illinois Appellate Court, Third Judicial District, reverse the Circuit Court's order and issue a mandate to the Circuit Court directing that the Respondent-Appellee's said Petition be denied.

Dated: November 16, 2017

Respectfully submitted,

DANIELLE FATKIN, Petitioner-Appellant

By: _____
One of her Attorneys

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Certificate of Service

I, Daniel M. Cordis, an attorney, hereby certify that on November 16, 2017, I caused a copy of the foregoing **Notice of Appeal** to be served by facsimile (as indicated) and U.S. Mail, deposited in Princeville, Illinois, with postage prepaid and plainly addressed to the following individuals:

Mr. Daniel S. Alcorn
Alcorn Nelson LLC
313 E. Main Street
Galesburg, Illinois 61401
309.345.0002 (f)

Honorable Paul L. Mangieri
Knox County Courthouse
200 S. Cherry Street
Galesburg, Illinois 61401

Honorable David L. Vancil, Jr.
Office of the Chief Judge
130 S. LaFayette Street, Suite 30
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2018 IL App (3d) 170779

Opinion filed April 25, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
DANIELLE FATKIN,	)	Knox County, Illinois.
	)	
Petitioner-Appellant,	)	
	)	Appeal No. 3-17-0779
and	)	Circuit No. 14-D-96
	)	
TODD FATKIN,	)	Honorable
	)	Paul L. Mangieri,
Respondent-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court, with opinion.
Justice Wright concurred in the judgment and opinion.
Justice Schmidt dissented, with opinion.

OPINION

¶ 1 As a result of the dissolution of their marriage, the parties, Danielle Fatkin and Todd Fatkin, were awarded joint custody of their two minor children. Todd subsequently filed a postdissolution petition for leave to relocate with the minors out of the state of Illinois. The trial court granted the postdissolution petition for relocation. Danielle appealed. We reverse and remand for further proceedings.

¶ 2 FACTS

¶ 3 Danielle and Todd were married on August 4, 2004. They subsequently had two children—a son born in 2004 and a daughter born in 2010.

¶ 4 Prior to the birth of their daughter, Danielle and Todd moved to East Galesburg, Illinois, in August 2008, where they resided together until their separation in June 2014. The trial court entered a final order on custody and visitation on July 16, 2015, and subsequently entered a dissolution of marriage judgment on June 10, 2016. Danielle and Todd were awarded joint custody of the minors, with "primary physical placement" with Todd. The parties were ordered to consult with each other in making significant decisions regarding the children related to medical, educational, religious, and extracurricular activities, with Todd designated as the parent to make decisions for the children if the parties were not able to come to a timely agreement. Danielle was given parenting time of overnight visits of 6 out of every 14 days (every Monday and Tuesday night and every other Saturday and Sunday night), plus time after school on Wednesdays, Thursdays, and Fridays until Todd got off of work. The parties were to alternate one-week periods of parenting time during summer break.

¶ 5 On February 10, 2017, Todd filed a notice of his intent to relocate with the children to live with his parents in Virginia Beach, Virginia. Danielle filed an objection to the relocation. On June 5, 2017, Todd filed a petition for leave to relocate with the minors to Virginia Beach pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/609.2 (West 2016)).

¶ 6 Over the course of a three-day hearing on Todd's petition to relocate, both parties testified and presented evidence and the trial court conducted an *in camera* interview with the parties' 12-year-old son. The parties' daughter was six years old at the time of the hearing and did not participate in the proceedings.

¶ 7 The evidence showed that Todd was 48 years old and rented the home where the parties formerly lived together during their marriage in East Galesburg, Knox County, Illinois. Todd had a Bachelor of Arts degree in fine arts and a dental hygienist associate's degree. He was licensed as a dental hygienist in both Virginia and Illinois. He also had a Montessori teaching certificate. From 2011 to 2015, Todd worked for a dental practice in Peoria, Illinois, earning $50,000 per year. Todd quit working for Aspen Dental because he had a job offer from a dentist's office in Moline, Illinois, making more money and he had "some major issues" with the ethics of the Peoria dental practice.

¶ 8 In late 2015, after working at the dentist office in Moline for four months, Todd's employment was terminated. Todd was subsequently denied unemployment benefits because he had been terminated due to misconduct. Todd applied to three local dentist offices near his home. He would not apply for dental jobs in bigger cities (*i.e.*, Peoria or the Quad Cities) because the commute would be over an hour and that was "not the quality of life" that he wanted. He did not want his kids "not to be able to see [him]" if he undertook that kind of a commute.

¶ 9 In April 2016, Todd began employment with City of Galesburg as a community service officer to enforce city ordinances for up to 1000 hours per year, at the rate of $12.00 per hour, with no benefits, for an annual income of $12,000 per year. Todd worked from April 2016 until the 1000 hours of work was exhausted in late October or early November. Todd applied for and received unemployment compensation from November until the start of the next employment cycle in April. He also received $508 per month in child support from Danielle ($6096 per year).

¶ 10 Danielle was 41 years old and lived within two miles of Todd's residence in a home that she had purchased. Danielle was employed as a tenure track professor of history and worked during the academic year from 8:30 a.m. until 2:30 p.m. She was under contract until 2020 with

her current employer, and she did not intend to leave the area. Danielle regularly exercised her parenting time. Danielle had been the soccer coach for both children (for the parties' son for one season and the parties' daughter for one season), volunteered in their classrooms, had been the room mother for the children's classes, and was the group leader for the parties' daughter's 4-H club group. Danielle was primarily responsible for scheduling the children's medical appointments, with Todd also involved. Danielle volunteered weekly in the classroom of the parties' daughter, attended parent-teacher conferences, and kept in regular contact with the children's teachers. She also provided enrichment activities related to archeology to share her expertise in her field of work at the children's school. Danielle and her children enjoyed doing many activities together, such as baking, running, biking, hiking, camping, taking road trips, reading, and horseback riding.

¶ 11 For the 2016-17 school year, Danielle had seen the children every day after school until spring 2017 when Todd told the parties' 12-year-old son that he was allowed to go directly home after school on Wednesdays, Thursdays, and Fridays because his son wanted to go home instead of going with Danielle. Todd told Danielle not to pick up their son on those days. Todd testified that he also placed their daughter in an after-school day care program on those days because she did not want to go Danielle's home after school. Danielle testified that for the 2017-18 school year, Danielle's teaching schedule changed so she could no longer get her daughter from school on Wednesdays or Fridays, but she still picked her daughter up on Thursdays until Todd got home from work. Danielle felt that her son would be better off spending the time with her after school on Todd's overnight weekdays because she wanted to spend time with him, he seemed too young to be by himself after school, and his grades were beginning to decline. In the 2016-17 academic year, the parties' son was getting Bs, Cs, and Ds, and in the current year of 2017-18 he

received a B, a D, and two Fs on his midterm report card. The parties' son had expressed concerns to Danielle about being bullied in school where he had been called names ("girl" and "Jew") and was shamed for not playing football.

¶ 12 The children were both involved in extracurricular activities. The parties' son was currently in soccer, jazz band, and the 4-H club. The parties' daughter was in gymnastics, soccer, and the 4-H club. Both children had many close friends in the area.

¶ 13 Todd wanted to relocate with the children to live in his parents' home in Virginia Beach. Todd had been raised in Virginia Beach until he and his parents had moved during his last year of high school. Todd's parents, who were in their mid-sixties, had returned to live in Virginia Beach some years prior. Todd's father was in good health, but his mother had stage 5 renal failure and was on a waitlist to receive a kidney transplant. If she did not receive a kidney, Todd did not know how much longer she would live. Todd testified that he and the children would live with his parents in their four or five bedroom home, which was "meticulously kept" by his mother. Todd's parents would not require Todd to pay rent and his day care arrangement for the children would be his parents, although his mother was not in good health and his father had to recently returned to work to pay for his mother's medication. Todd also testified that he had childhood friends in Virginia Beach that he could call if he needed someone to watch the children. One of the reasons Todd wanted to relocate to Virginia was because his mother was not in good health and they did not know how much longer she had to live.

¶ 14 Todd testified that he was familiar with the schools in Virginia Beach. Todd explained the school system in Virginia Beach was "a way better school system" with extracurricular activities that are "enormous" compared to those in Knox County, Illinois. Todd explained the teen sports activities offered in Virginia Beach were "far, far greater" and the children would

have "much, much better opportunities within the education." Todd testified to the names of the schools in Virginia Beach the children would attend. Todd testified that the school system in Virginia Beach was "enormously diverse" and the lack of diversity was one of the things that "saddened" him about the children's school system in Illinois. Todd testified that the band program in Virginia Beach was "top notch" and better than the band program at the children's school in Illinois. He indicated the East Coast Surfing Championships held in Virginia Beach was one of his own childhood "go-tos," which he had surfed in as a child, from the third grade through high school. He explained that, if there was a multi-day festival, there were activities every single day, with free concerts from live bands that were not "rinky-dink bands" but, rather, bands like Metallica and big-named bands. Virginia Beach also had art, theatre, and a marine science center.

¶ 15 Todd served in the Coast Guard for four years after high school. He testified that he was rated with the United States Department of Veterans Affairs (VA) to have full medical care. He testified that due to where he resided in Illinois, he could go to a VA clinic for blood work and physicals but for anything more extensive he would have to travel to Iowa City, Iowa. Todd testified the healthcare available to him through the VA in Virginia Beach would be better and more accessible than in Knox County, Illinois.

¶ 16 Todd further testified that he would immediately be employed upon his arrival in Virginia Beach. Todd produced an undated letter of intent to hire from the store manager of a retail store in Virginia Beach. The store manager indicated in the letter, "[p]ay rate is hourly in the range of $9.50-$16.50 and all employees gain benefits with a rolling average of 20 hours per week." Todd testified that he would begin working as a sales associate, and he believed that he would be able to easily move into a supervisory position making $20 per hour because he had prior

experience with the company at another location. (A resume of Todd's submitted into evidence indicated that Todd had worked for the same retail company in California from 1998 to 2007.) Upon moving to Virginia Beach, Todd intended to work full-time as a retail associate and also to look for dental hygienist positions.

¶ 17 Todd testified that he wanted to move to Virginia Beach to provide the children with a better quality of life, higher standard of living, and good educational opportunities. Todd testified the only extended family he had in Virginia Beach were his parents. Todd did not have any extended family in Knox County, Illinois. Todd had not been to Virginia Beach since June of 2014 (three years), and the parties' children had not been to Virginia Beach since 2013 (over four years) when they had visited at the ages of nine and three. The children had not seen Todd's mother since 2014 when she came to Illinois for a visit (three years prior). The children had not seen Todd's father since the last time they were in Virginia Beach in 2013 (for over four years).

¶ 18 On November 13, 2017, the trial court entered a written order granting Todd's petition for leave to relocate. The trial court found that Todd's parents were "financially secure"; Todd would live in his parents' home rent free; residing with Todd's parents would provide "a sense of extended family" and "a support system" that was not present in Illinois; Virginia Beach was an affluent and diverse area, with concerts and festivals that "would not be available to the children in their present location"; employment opportunities for Todd in Virginia Beach were "abundant"; assuming a pay rate of $13.00 per hour, Todd would make $13,520 per year working at least 20 hours per week with the opportunity to gain benefits at the retail store and it could be inferred that there would be "a fair demand" for dental hygienists in the Virginia Beach area, with 400,000 inhabitants, that would pay "at least equal to if not more" than what Todd earned when employed in Illinois as a dental hygienist earning $50,000 per year; Todd would

receive more advanced VA medical care without having to drive two hours and the VA care that would be available 20 miles from Virginia Beach in Norfolk, Virginia, was "certainly more comprehensive than that offered in Todd's present location and minutes away as compared to hours"; there appeared to be available and adequate medical care for the children in both their current Illinois location and in Virginia Beach; based upon Todd's experience from growing up in Virginia Beach and his research, Todd had testified that the Virginia Beach schools were "far more multicultural and ethically diverse," and the trial court found him "credible and accurate" but acknowledged the lack of objective evidence to allow for a qualitative assessment; the bullying that the parties' son experienced at school was of a racial, religious, or machismo nature, which "is always based upon ignorance and almost always the product of a community that lacks cultural or racial diversity" and in that respect the Virginia Beach school district "would appear to be superior to that of children's current district"; Danielle's relationship with the parties' daughter was good and her relationship with the parties' son was "strained and somewhat tenuous," with both children preferring not to go to their mother's home after school; the parties' son loved both parents but viewed Todd as the more caring, understanding, and nurturing parent and found Danielle confusing, arbitrary, and withdrawn; the parties' son stated his preference in favor of relocating to Virginia Beach; and the parties' son would not be significantly impacted by the relocation, while for the parties' daughter "the impact may be more manifest, as it appear[ed] from the testimony that [she] has a stronger bond with her mother."

¶ 19 The trial court found that it would be able to fashion a reasonable allocation of parental responsibilities in granting the relocation, finding "no need to vary or alter the current division of parental responsibilities as it now stands." The trial court acknowledged that by dividing parenting time along the lines of summer and holiday time, there would be a "*de facto*"

allocation of "day to day parental responsibilities among the parties" with each parent essentially solely responsible for the day-to-day oversight of the children when they were in the respective parent's care, with the parties consulting in regard to significant decisions related to medical, educational, religious, and extracurricular activities

¶ 20 The trial court also found that the discrepancy between the testimony of the parties' son and Danielle regarding whether the parties' son had heard Danielle on more than one occasion discussing the possibility of relocating to Tennessee where her boyfriend resided was troubling. The trial court indicated that the parties' son appeared credible, Danielle had not absolutely denied having the conversations about relocating to Tennessee, and Danielle's contemplation of a relocation created "the existence of a possible double standard on the part of Danielle relative to her opposition to [Todd's] relocation."

¶ 21 The trial court found that it was in the best interest of the children to grant the relocation. The trial court modified the parties' parenting time so that the children would reside with Todd for the school year, from a week before school started until a week after school ended, and then they would reside with Danielle for the remaining weeks of the summer. Danielle would also have the children every other Thanksgiving break (odd years), every other spring break (odd years), and a portion of every winter break.

¶ 22 The trial court noted that granting the petition for relocation raised issues of reasonable costs of transportation and altered the number of nights each parent would have the children so that a modification of child support would have to be addressed. The trial court indicated that because it did not have specific information concerning the economic circumstances of the parties, it was reserving its ruling on issues of allocation of transportation costs and modification of child support.

¶ 23 On November 16, 2017, Danielle filed a notice of appeal from the trial court's order of November 13, 2017. In the notice of appeal, Danielle requested that this court reverse the order granting Todd's petition for leave to relocate.

¶ 24 ANALYSIS

¶ 25 I. Appellate Jurisdiction

¶ 26 On appeal, Todd initially argues that this court lacks jurisdiction to hear Danielle's appeal from the trial court's order granting him leave to relocate to Virginia Beach because issues of transportation costs and modification child support were reserved and remained pending in the trial court. Danielle contends that the relocation order in this case constituted a modification of parental responsibilities that could be appealed under Illinois Supreme Court Rule 304(b)(6) (eff. Mar. 8, 2016). The issue of this court's jurisdiction is a legal question that we determine *de novo*. *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 10.

¶ 27 Generally, where an order appealed from resolves less than all claims, a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) is required. Rule 304(a) provides, "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." *Id.* Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims are resolved unless an appeal is provided for elsewhere under the supreme court rules. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008).

¶ 28 Rule 304(b)(6) provides that a custody order entered within a dissolution proceeding is a final appealable order without regard to the pendency of remaining issues. *In re Marriage of*

Harris, 2015 IL App (2d) 140616, ¶ 16. Rule 304(b)(6) allows for the immediate appeal of a "custody or allocation of parental responsibilities judgment or modification of such judgment" without a Rule 304(a) finding. Ill. S. Ct. R. 304(b)(6) (eff. Mar. 8, 2016). The committee comments to Rule 304(b) state:

> "The intent behind the addition of subparagraph (b)(6) was to supercede the supreme court's decision in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). In *Leopando*, the court held that the dissolution of marriage comprises a single, indivisible claim and that, therefore, a child custody determination cannot be severed from the rest of the dissolution of the marriage and appealed on its own under Rule 304(a). Now, a child custody judgment, even when it is entered prior to the resolution of other matters involved in the dissolution proceeding such as property distribution and support, shall be treated as a distinct claim and shall be appealable without a special finding. *** The goal of this amendment is to promote stability for affected families by providing a means to obtain swifter resolution of child custody matters." Ill. S. Ct. R. 304(b), Committee Comments (adopted Feb. 26, 2010).

¶ 29 The language of Rule 304(b)(6) does not specifically reference relocation judgments but, rather, references custody judgments/judgments allocating parental responsibilities and the modification of such judgments as being appealable despite other issues that remain pending in the trial court. In *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶¶ 22-23, the First District of the Illinois Appellate Court held that an order denying a mother's postdissolution petition to relocate was not a "custody judgment" or a modification of custody as contemplated by Rule 304(b)(6). In addition, in *In re Marriage of Bednar*, 146 Ill. App. 3d 704, 708 (1986), a

mother appealed the denial of her motion to dismiss the father's removal petition, contending the removal petition constituted a petition to modify custody where the parties had joint custody, and the First District appellate court held that a removal is not a petition to modify custody as a matter of law, even when the parties had been awarded joint custody.

¶ 30 In this case, Danielle appealed the order allowing Todd's postdissolution petition for leave to relocate while the issues of modification of child support and allocation of transportation costs were reserved by the trial court. The effect of the order entered by the trial court allowing the removal was a *de facto* modification of the parties' joint custody award. Under the original custody order, Danielle had joint parental decision making responsibilities on every major parenting issue, the children lived with Danielle 6 of 14 days, and Danielle was additionally allowed to see the children after school on the remaining days of the school week until Todd got home from work. Danielle lived two miles from the children, allowing her to be involved with the children on an almost daily basis and facilitating her ability to execute joint decision making responsibilities. Under the relocation order, Danielle would see the children for approximately one-third of the year, as opposed to almost every day of the year, with her allotted parenting time largely limited to the summer. To say that, in reality, Danielle would retain any meaningful decision-making responsibilities about the children's education, extracurricular activities, healthcare, or religion during the school year or that Todd would have a say in whether the children were involved in educational, extracurricular, or religious activities during Danielle's summer parenting time would be a fallacy.

¶ 31 This case is distinguishable from *Rogan* and *Bednar* because those cases dealt with the parties' filings related to a request for a potential relocation, whereas a relocation order entered by the trial court in this case that, in effect, modified the prior judgment allocating parental

responsibilities. See *Rogan M.*, 2014 IL App (1st) 132765; *Bednar*, 146 Ill. App. 3d 704. While not all relocation orders may constitute a modification of a joint custody order, the relocation order entered in this case modified the judgment awarding the parties' joint parenting responsibilities to such an extent that we view it as a modification of the prior order allocating parental responsibilities and, therefore, it falls within the scope Rule 304(b)(6). As such, we have jurisdiction under Rule 304(b)(6) over Danielle's appeal from the relocation order entered in this case.

¶ 32 II. Relocation

¶ 33 On appeal, Danielle argues that the trial court erred in granting Todd's petition for leave to relocate with the minor children from Illinois to Virginia Beach, Virginia. Pursuant to section 609.2(g) of the Marriage Act, the trial court "shall modify the parenting plan or allocation judgment in accordance with the child's best interests" by considering the following 11 factors:

> "(1) the circumstances and reasons for the intended relocation;
>
> (2) the reasons, if any, why a parent is objecting to the intended relocation;
>
> (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
>
> (4) the educational opportunities for the child at the existing location and at the proposed new location;
>
> (5) the presence or absence of extended family at the existing location and at the proposed new location;
>
> (6) the anticipated impact of the relocation on the child;

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

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

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

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

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2 (West 2016).

¶ 34 The parent seeking relocation has the burden of proving, by a preponderance of the evidence, that relocation would be in the child's best interest. *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 15. The paramount question in any removal case is whether the move is in the best interest of the child. *In re Marriage of Eckert*, 119 Ill. 2d 316, 325 (1988). Our supreme court has held a "determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Id.* at 326. A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *Id.* at 328. There is a "strong and compelling" presumption in favor of the result reached by the trial court because the trial court had the opportunity to observe the parties and assess and evaluate their temperaments, personalities, and capabilities. (Internal quotation marks omitted.) *Id.* at 330.

¶ 35 Here, the trial court considered each factor set forth in section 609.2 of the Act. The evidence showed that Todd wanted to move to Virginia to enhance the quality of life of the children and provide them with a better standard of living. As for Todd's employment, the evidence showed that Todd was voluntarily underemployed in Illinois. While Todd was offered a $9.50 to $16.50 per hour retail job in Virginia Beach at some point (the letter entered into evidence was not dated), there was no indication of how many hours he would be given or his actual starting pay. There was also no evidence as to the lack of similar retail jobs in Illinois that would necessitate relocating the minors to Virginia Beach for Todd to take this particular. There was also no evidence regarding opportunities for Todd in Virginia Beach in regard to working as a dental hygienist. Todd had been terminated from his position as a dental hygienist, and he had not been offered a dental hygienist position since, in Virginia or Illinois. There was no evidence of any prospective dental hygienist positions in Virginia Beach. Todd also testified that he was trained and had experience as a Montessori teacher but there were no local Montessori schools where he could teach in Illinois. There was no indication that he sought out employment in Illinois as a teacher in any educational setting. As for the children's education, the trial court acknowledged, Todd provided no qualitative evidence regarding his claim that the schools in Virginia Beach were superior.

¶ 36 If they relocated, the children would have the extended family of their two grandparents in Virginia Beach, whereas they have no extended family in Illinois. However, the reality is that the children would be relocating away from their longtime friends, their childhood home, and their mother, who provides at least 44% of their care, in order to move into a home that belongs to their paternal grandparents, who they have not seen in many years and who are expected to

provide them with day care when Todd is at work, despite the grandmother's failing health and the grandfather having recently returned to work.

¶ 37 Both Todd and Danielle have exercised their respective parental responsibilities and parenting time, and neither of them had substantially failed or refused to exercise their allotted parental responsibilities under the allocation of parental responsibilities judgment. Danielle has been heavily involved in her children's activities and schooling. Given the distance and the long gaps between her parenting time, Danielle's influence and involvement in parental decision making during the school year would greatly be diminished or nonexistent under the relocation order.

¶ 38 Based on this record, the trial court's finding that the relocation was in the best interest of the children was against the manifest weight of the evidence. Therefore, we reverse the trial court's order granting Todd's petition for leave to relocate with the minors and remand for further proceedings.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we reverse the judgment of the circuit court of Knox County and remand for further proceedings.

¶ 41 Reversed and remanded.

¶ 42 JUSTICE SCHMIDT, dissenting:

¶ 43 I dissent from both of the majority's holdings. First, we do not have jurisdiction to review this case. The majority cites no case that holds otherwise. Despite the majority's attempt to distinguish this case from *Rogan* and *Bendar* (*supra* ¶ 31), the facts are virtually the same. I believe the holdings in *Rogan* and *Bendar* are correct and apply here. The mother's difficulty in

exercising her joint custody rights is a factor that the trial court considered in granting the relocation request; it does not affect this court's jurisdiction under Rule 304(b)(6).

¶ 44 Even if we had jurisdiction, the record does not support the majority's determination. The majority sidesteps our standard review by improperly reweighing the evidence. See *supra* ¶¶ 35-38. As the majority recognizes, we give substantial deference to the trial court's determination and do not overturn it absent a "manifest injustice." *Supra* ¶ 34. This is so because the trial court observes the parties and witnesses firsthand throughout the case; this court does not. This record is devoid of any inkling that a manifest injustice occurred. I would affirm the trial court's judgment.