2023 IL App (4th) 220859-U

NO. 4-22-0859

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 22, 2023
Carla Bender
4th District Appellate
Court, IL

KAITLYN S.,	)	Appeal from the
Petitioner-Appellee,	)	Circuit Court of
v.	)	Macoupin County
CORBIN B.,	)	No. 12F118
Respondent-Appellant.	)	
	)	Honorable
	)	Kenneth R. Deihl,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice DeArmond and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed an order allocating decision-making responsibilities and parenting time between the parties. The trial court had subject matter jurisdiction, and the judgment was not against the manifest weight of the evidence.

¶ 2 Respondent, Corbin B., and petitioner, Kaitlyn S., are the parents of 11-year-old R.S. In August 2022, the trial court entered an order (1) designating Kaitlyn as the sole decision-maker with respect to R.S.'s health, education, extracurricular activities, and religion, (2) modifying the parties' allocation of parenting time, and (3) modifying the parties' right of first refusal for childcare from 2 hours to 10 hours. Corbin appeals, arguing that the order was against the manifest weight of the evidence and that the court lacked subject matter jurisdiction to address decision-making responsibilities. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Kaitlyn and Corbin were never married, and they ended their relationship when R.S. was less than a year old. This case began in December 2012, when the Illinois Attorney General filed an action on Kaitlyn's behalf to establish Corbin's child support obligation. During the ensuing years, Corbin relocated multiple times, and Kaitlyn generally served as R.S.'s primary caretaker.

¶ 5 The trial court modified the parties' parenting plan multiple times. Of relevance to this appeal, on March 4, 2020, the court entered an order with the following salient terms. The parties would "share all decision-making responsibilities with respect to education, health, religion, and extra-curricular activities of the child." Corbin would have parenting time every other weekend from Friday after his work until Sunday at 6 p.m. If Corbin worked during one of his weekends with R.S., Kaitlyn could pick up R.S. immediately before Corbin started work and return her when Corbin ended work. If Corbin was off work on a weekend that was not his designated weekend with R.S., he could have "extra" parenting time ending on Sunday at 2 p.m. Kaitlyn would have parenting time at all other times. If one parent was unable to care for R.S. for more than two hours during his or her parenting time, the other parent would have the right of first refusal for childcare.

¶ 6 On March 31, 2020, Kaitlyn filed a motion to reconsider and vacate the March 4, 2020, order. On September 25, 2020, Corbin filed a "verified motion to modify parenting time allocation." In July 2022, the trial court held an evidentiary hearing on those matters. The following is a summary of the evidence adduced at that hearing. In the analysis section, we will provide additional facts pertaining to Corbin's claim regarding subject matter jurisdiction.

¶ 7 A. Summary of the Evidence

¶ 8 At the time of the July 2022 hearing, Corbin was a police officer in Madison County. He worked 12-hour shifts on a rotating schedule. Specifically, for three months, Corbin would work from 5 p.m. to 5 a.m., then the next three months he would work from 5 a.m. to 5 p.m. Corbin's days off from his police work also rotated. Corbin additionally served in the Army National Guard, working 1 weekend per month (those days varied each month), plus 14 days in the summer.

¶ 9 For the year and a half before the hearing, Corbin lived in Brighton, Illinois, with his wife, Sarah, and their three children. (Sarah and Corbin had one child together, and Corbin adopted Sarah's two other children.) Corbin testified that, if he moved again, it would be within 10 minutes of where he currently lived.

¶ 10 Kaitlyn also lived in Brighton. She lived alone, except for when she had parenting time with R.S. Kaitlyn was an X-ray technician at a hospital. She worked 8 a.m. to 4 p.m., Monday through Friday, plus every third weekend. If Kaitlyn worked on a weekend, she would get a day off during both the preceding and following weeks—typically Wednesdays. Kaitlyn testified that she had sacrificed career and relationship opportunities in her efforts to put R.S. first.

¶ 11 R.S. was 10 years old at the time of the hearing. She did not testify, but Ian Murphy's guardian *ad litem* (GAL) reports made it clear that she loved her parents and wished to spend time with both of them.

¶ 12 Corbin and Kaitlyn did not get along or communicate regularly. Corbin complained that Kaitlyn did not give him information regarding R.S. For example, Kaitlyn unilaterally enrolled R.S. in counseling and did not consistently keep Corbin apprised of R.S.'s medical issues. The parties provided conflicting testimony about whether Kaitlyn always sent R.S.'s medication to Corbin for Corbin's parenting time.

¶ 13 Corbin also believed that Kaitlyn discouraged R.S. from developing a relationship with her stepsister, who was R.S.'s age. Kaitlyn denied discouraging that relationship. Corbin testified that R.S. had good relationships with Sarah's children. However, there were indications in Murphy's reports that R.S. felt bullied by her stepsister and was upset by that. The evidence showed that R.S. generally had a good relationship with Sarah. However, R.S. told Murphy she wanted to be with Sarah only when both Corbin and Kaitlyn were working.

¶ 14 Kaitlyn complained that Corbin did not respond consistently or civilly when she tried to communicate with him, even about R.S.'s medical issues. When the trial court asked Corbin how the parties could fix their problems, Corbin said the court should enter a comprehensive order so the parties could "minimize conversations or the amount of times we have to talk." Kaitlyn also testified that Corbin made threats, such as that he would "take full custody" of R.S. Kaitlyn was unhappy that Corbin had R.S. baptized on a day he knew Kaitlyn was working, with minimal notice to Kaitlyn.

¶ 15 Kaitlyn believed that Corbin lied to R.S. about various things. R.S. also expressed to Murphy that she did not trust some of the things Corbin said about Kaitlyn. Kaitlyn further complained that when R.S.'s orthodontic "expansion set" fell out during Corbin's parenting time, Corbin did not tell Kaitlyn about it, and she needed to take time off work to get it fixed. According to Kaitlyn, during the pendency of this custody litigation, R.S. spent less time than usual with R.S.'s best friend and with Kaitlyn's family.

¶ 16 The evidence showed that R.S. was aware of and impacted by her parents' difficult relationship. Murphy expressed concerns that Corbin and Sarah said negative things to R.S. about Kaitlyn. Murphy also questioned whether Corbin influenced R.S. to tell Murphy she wanted equal

parenting time. Corbin denied pressuring or influencing R.S., though he admitted that he and Sarah had discussions with R.S. about her preferences for allocating parenting time.

¶ 17 As mentioned above, under the March 4, 2020, order, Corbin could have "extra" partial weekends with R.S. whenever he was off work. The March 4, 2020, order also contained a two-hour right of first refusal for childcare. In the months leading up to the hearing, Corbin arranged to be off work during most of his nondesignated weekends, allowing him to have parenting time most weekends. If Corbin worked a shift starting at 5 a.m. during his designated parenting time, Kaitlyn insisted on picking up R.S. before dawn rather than letting her sleep in while Sarah was home. By the same token, if Corbin worked a night shift and finished work at 5 a.m., he wanted Kaitlyn to bring R.S. to his home at 5:30 a.m.

¶ 18 Corbin requested an equal split of parenting time, with his parenting time "pretty much" on all of his days off of work. If the trial court allowed equal parenting time, Corbin preferred eliminating the right of first refusal from the parenting plan. Alternatively, he wanted the right of first refusal to be for a period longer than two hours.

¶ 19 Kaitlyn requested sole decision-making authority. On that point, she believed Corbin was not responsible when it came to R.S.'s health and would not discuss those issues with Kaitlyn. Kaitlyn wanted the majority of parenting time. She testified that Corbin wanted "another court order to cater to his schedule," which had not gone well in the past and did not accommodate her work schedule. Thus, Kaitlyn proposed Corbin have parenting time every other weekend, along with one weekday evening every other week. Kaitlyn requested the trial court modify the right of first refusal from 2 hours to 10.

¶ 20 Murphy recommended that the parties have joint decision-making authority and equal parenting time. Murphy's rationale was that there was no reason why the parties should not

be able to work together civilly for R.S.'s best interests. Murphy did not propose a parenting schedule, and he suggested the parties should try to figure one out themselves. However, Murphy recommended against a weekly split of parenting time, as it would be difficult for R.S. to go a week without seeing a parent, particularly Kaitlyn. Murphy also recommended against setting a parenting schedule based on the parties' work schedules. That had not worked in the past, so Murphy recommended "set" parenting times, regardless of the parties' work schedules. In Murphy's opinion, the right of first refusal should be "[v]ery limited" because the parties were not cooperating well.

¶ 21 B. The Court's Findings and Order

¶ 22 On August 16, 2022, the trial court entered an order modifying decision-making responsibilities and parenting time. The court analyzed 32 statutory factors. See 750 ILCS 5/602.5(c)(1)-(15) (West 2020) (listing 15 factors relevant to allocating significant decision-making responsibilities); 750 ILCS 5/602.7(b)(1)-(17) (West 2020) (listing 17 factors relevant to allocating parenting time). Rather than addressing each factor, we will focus on the points that seem particularly important to the court's determinations.

¶ 23 The trial court allocated to Kaitlyn "sole decision-making responsibility for health, education, extra-curricular activities, and religion." In explaining its decision, the court noted the high degree of conflict between the parties, along with their inability to cooperate and communicate. The court stated that it initially shared Murphy's view that decision-making responsibilities should be allocated equally between Kaitlyn and Corbin. "However, after further consideration of the evidence, it is clear the parties are not yet able to communicate and cooperate on decisions for the child." Other facts that persuaded the court to allocate sole decision-making responsibilities to Kaitlyn included that (1) Kaitlyn was "more attentive [than Corbin] to the

child's mental and physical health needs," (2) Kaitlyn historically made the greater share of significant decisions pertaining to R.S., and (3) Corbin's work schedule "made him less available" to R.S. than Kaitlyn was.

¶ 24 The trial court allocated Kaitlyn primary parenting time. The court determined that Murphy's recommendation for equal parenting time was neither appropriate nor in R.S.'s best interests. In explaining its decision, the court again found that Kaitlyn's work schedule was more consistent than Corbin's, and Corbin's work schedule "limits his availability for the child." The court also mentioned that Corbin had moved multiple times in recent years. The court determined that another move by Corbin, which Corbin testified was possible, "would further disrupt the child's schedule and routine" if parenting time were equal.

¶ 25 The trial court also considered the parties' respective histories of spending time with R.S. and tending to her needs. The court determined that both parties had loving relationships with R.S. The court recognized that Kaitlyn "made many sacrifices for the child" at the expense of her career, relationships, and social life. The court found that Kaitlyn generally was solely responsible for scheduling and attending R.S.'s medical appointments, enrolling her in school, and ensuring she took medication. Corbin, on the other hand, "did not spend much time performing caretaking functions" with R.S. during 2018 and 2019. Although Corbin had exercised more parenting time in the months leading up to the hearing, the court added that he purportedly did so by taking off work.

¶ 26 The trial court recognized that R.S. expressed to Murphy wanting an even split of parenting time and to spend more weekends with Kaitlyn. However, the court also noted Murphy's suspicions that Corbin and Sarah may have influenced R.S. to say this. Thus, the court did not place much weight on R.S.'s preferences. The court also mentioned that R.S. reported that Corbin

and Sarah would say untrue things about Kaitlyn and speak badly of her. Based on R.S.'s statements to Murphy, the court found that Corbin interfered with the relationship between R.S. and Kaitlyn. As additional factors supporting allocating Kaitlyn primary parenting time, the court found that Corbin threatened to take full custody and refused to communicate with Kaitlyn "on basic parenting time issues."

¶ 27 The trial court ordered that Corbin would have parenting time every Wednesday from 3 to 8 p.m. He would also have parenting time every other weekend from Friday at 6 p.m. until Sunday at 6 p.m., with his first weekend beginning on August 26, 2022. On a week that Corbin did not have weekend parenting time, he would have parenting time on Thursday from 3 to 8 p.m. Kaitlyn would have parenting time at all times not allocated to Corbin. The court entered holiday and vacation schedules that are not at issue on appeal. The court gave the parties a 10-hour right of first refusal for childcare.

¶ 28 We granted Corbin leave to file a late notice of appeal.

¶ 29 II. ANALYSIS

¶ 30 Corbin argues that the trial court lacked subject matter jurisdiction to modify the allocation of decision-making responsibilities. Corbin also maintains the court's order was against the manifest weight of the evidence in multiple respects.

¶ 31 Pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018), absent "good cause," our disposition was due to be filed by February 20, 2023. The parties both requested oral argument, which was held on February 28, 2023. We determine that accommodating the parties' requests for oral argument constitutes good cause for the delayed resolution of this appeal. See *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 53 (finding good cause where accommodating requests for oral argument delayed the filing of the decision).

¶ 32 A. Jurisdiction

¶ 33 Corbin first questions the trial court's subject matter jurisdiction. According to Corbin, because no pleading requested a modification of decision-making responsibilities, the court lacked subject matter jurisdiction to address that issue. In presenting this argument, Corbin asserts that Kaitlyn abandoned her March 31, 2020, motion to reconsider and vacate the March 4, 2020, order, as Kaitlyn did not secure a ruling on her motion.

¶ 34 Kaitlyn responds that the trial court had jurisdiction over the issue of decision-making responsibilities. Kaitlyn notes that (1) the parties agreed the existing parenting plan should be modified, (2) Murphy made recommendations about decision-making responsibilities, (3) both parties presented evidence regarding decision-making responsibilities, and (4) the court made findings relevant to determining R.S.'s best interests.

¶ 35 "Subject matter jurisdiction 'refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.' " *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 35 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002)). "To invoke the circuit court's subject matter jurisdiction, a party need only present a justiciable matter, *i.e.*, 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *LVNV Funding*, 2015 IL 116129, ¶ 35 (quoting *Belleville Toyota*, 199 Ill. 2d at 335). "[T]he failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction or constitute a nonwaivable condition precedent to the circuit court's jurisdiction." *LVNV Funding*, 2015 IL 116129, ¶ 37. We review *de novo* whether the trial court had subject matter jurisdiction. *In re Marriage of Britton*, 2022 IL App (5th) 210065, ¶ 39.

¶ 36 Corbin does not dispute that circuit courts generally have subject matter jurisdiction over cases involving the allocation of decision-making responsibilities for children. However, Corbin cites cases where trial courts erroneously granted relief that no party requested and without prior notice to the affected party. See *In re Custody of Ayala*, 344 Ill. App. 3d 574, 585, 587 (2003); *In re Marriage of Fox*, 191 Ill. App. 3d 514, 521 (1989); *Ottwell v. Ottwell*, 167 Ill. App. 3d 901, 909 (1988). The following additional facts will make it clear why these cases are distinguishable.

¶ 37 On March 4, 2020, the trial court entered an order that included the parties sharing decision-making responsibilities. On March 31, 2020, Kaitlyn moved to reconsider and vacate that order. She asserted that the parties did not agree to this order and the court did not conduct an evidentiary hearing to hear the parties' concerns. On August 31, 2020, the court heard argument on Kaitlyn's motion but did not rule. On September 25, 2020, Corbin filed a verified motion to modify the allocation of parenting time. On July 18, 2022, Murphy submitted a GAL report indicating that one of the issues the parties disagreed on was who should make significant decisions for R.S. Murphy recommended that the parties should have equal decision-making responsibilities.

¶ 38 At the beginning of the evidentiary hearing on July 27, 2022, Kaitlyn's counsel informed the trial court that her March 31, 2020, motion was never adjudicated. Kaitlyn's counsel also told the court that both parties wanted to modify the existing parenting plan. Corbin's counsel concurred with Kaitlyn's counsel's statement that "this 2020 parenting plan will be modified one way or the other."

¶ 39 During his testimony on direct examination by his own counsel, Corbin testified that Kaitlyn did not involve him with decisions impacting R.S. Corbin's counsel also asked him: "So it would be your opinion that—if the Court were to retain shared decision making, that you would like to be actively involved in religious training for [R.S.]?" Corbin responded, "[y]es."

Corbin later testified he was aware of Murphy's recommendation that the parties should share decision-making responsibilities.

¶ 40 Kaitlyn testified she was "aware that the Court will be making a decision on allocation of decision[-]making for health, education, extracurricular, and religion." She testified that she wanted sole decision-making responsibilities.

¶ 41 At the conclusion of evidence, the trial court asked both parties to submit written closing arguments and proposed orders. In her closing argument, Kaitlyn requested sole decision-making responsibilities, and she included a provision to that effect in her proposed parenting plan. In his closing argument, Corbin requested shared decision-making responsibilities, and he included a provision to that effect in his proposed parenting plan.

¶ 42 On August 16, 2022, the trial court entered its judgment. The court indicated that the cause was before the court for trial regarding Corbin's September 25, 2020, motion and Kaitlyn's March 31, 2020, motion. The court specified that the parties agreed one of the main issues before the court was "the allocation of parental responsibility for significant decision-making involving health, education, extracurricular activities, and religion."

¶ 43 Against this factual background, we determine that Corbin's challenge to the trial court's jurisdiction lacks merit. In her March 31, 2020, motion, Kaitlyn requested to vacate the entire parenting plan that was ordered on March 4, 2020. Although Kaitlyn focused primarily on parenting time in her motion, by requesting to vacate the prior order, she put the entire order at issue. That would necessarily include the order's provision regarding the allocation of decision-making responsibilities. Contrary to Corbin's argument, Kaitlyn did not abandon her March 31, 2020, motion after it was heard for argument in August 2020. Rather, Kaitlyn sought a ruling on that motion in July 2022, and the court ruled on that motion on August 16, 2022. Thus, unlike the

cases Corbin cites, the court's ruling here conformed to Kaitlyn's request contained in a broadly worded pleading.

¶ 44 Moreover, unlike the cases Corbin cites, he had fair notice that the issue of decision-making responsibilities was before the trial court. Indeed, he addressed that issue in his testimony, and he requested the court to order the parties to share responsibilities. Although there was no pleading on file at the time of the evidentiary hearing expressly requesting the court to modify the allocation of decision-making responsibilities, the parties essentially stipulated that the court should address that issue. See *People ex rel. Gibbs v. Ketchum*, 284 Ill. App. 3d 70, 78 (1996) ("While there was no pending petition or motion before the trial court in this case, that fact alone will not deprive the court of the authority to act where the parties agree in a stipulation concerning some matter which requires resolution by the court."); see also *Britton*, 2022 IL App (5th) 210065, ¶¶ 37, 44, 48 (holding that a party could not invite the trial court to modify an insurance obligation and then argue on appeal that the trial court lacked subject matter jurisdiction to do so).

¶ 45 For these reasons, we hold that the trial court had subject matter jurisdiction to address the issue of decision-making responsibilities.

¶ 46 B. Sufficiency of the Evidence

¶ 47 Corbin also contends that three aspects of the trial court's judgment were against the manifest weight of the evidence. He argues that the court erred by (1) giving Kaitlyn sole decision-making responsibility for significant decisions, (2) allocating the majority of parenting time to Kaitlyn, and (3) ordering a 10-hour right of first refusal.

¶ 48 1. *Decision-Making Responsibilities*

¶ 49 We will not disturb the ordered allocation of decision-making responsibilities unless the trial court's decision was against the manifest weight of the evidence. *Jameson v.*

Williams, 2020 IL App (3d) 200048, ¶ 47. " 'A decision is against the manifest weight of the evidence when an opposite conclusion is apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Jameson*, 2020 IL App (3d) 200048, ¶ 47 (quoting *In re Marriage of Verhines*, 2018 IL App (2d) 171034, ¶ 51). We must remember that the trial court was in the superior position to evaluate the evidence, to assess the credibility of witnesses, and ultimately to determine R.S.'s best interests. *Jameson*, 2020 IL App (3d) 200048, ¶ 50. We will not set aside the decision merely because the evidence could have supported a different conclusion. *Jameson*, 2020 IL App (3d) 200048, ¶ 51.

¶ 50 We hold that allocating to Kaitlyn sole responsibility for significant decisions was not against the manifest weight of the evidence. The trial court thoroughly and reasonably evaluated all relevant statutory factors. See 750 ILCS 5/602.5(c)(1)-(15) (West 2020). Clearly, the most significant factor weighing against shared decision-making was that the parties could not communicate effectively with each other. The parties' prior parenting plan gave them an equal say in significant decisions involving R.S., and that arrangement proved unsuccessful.

¶ 51 Murphy recommended the parties share decision-making responsibilities. The trial court was not obligated to adopt Murphy's recommendation. *In re Marriage of Virgin*, 2021 IL App (3d) 190650, ¶ 51. Corbin asserts that "the trial court gave no reasons" for deviating from Murphy's recommendation. The record contradicts that assertion. The court explained that it initially "shared the same view" as Murphy about decision-making responsibilities. However, "after further consideration of the evidence," the court determined the parties could not "communicate and cooperate on decisions for the child." The court's assessment in this respect was reasonable. Notably, the basis for Murphy's recommendation for shared responsibilities was

not that the parties demonstrated they could communicate effectively, but that they *ought to* be able to communicate effectively. The court had good reason to reject Murphy's recommendation.

¶ 52 The evidence overwhelmingly showed a need for one parent to make significant decisions for R.S. The trial court reasonably allocated those responsibilities to Kaitlyn. Kaitlyn historically made most of the significant decisions affecting R.S., albeit purportedly by excluding Corbin from the process at times. There was also evidence supporting the court's finding that Kaitlyn was "more attentive to the child's mental and physical health needs," such as by taking R.S. to doctors and following up on recommendations. Under the circumstances, we cannot say that the court's decision was against the manifest weight of the evidence.

¶ 53 2. *Parenting Time*

¶ 54 We likewise review the trial court's allocation of parenting time under the manifest-weight-of-the-evidence standard. *In re Marriage of Whitehead*, 2018 IL App (5th) 170380, ¶ 21. "The circuit court is in the best position to assess the credibility of witnesses and to determine the child's best interest, so we afford its allocation of parenting time great deference." *Virgin*, 2021 IL App (3d) 190650, ¶ 45.

¶ 55 Corbin emphasizes that Murphy recommended an equal allocation of parenting time. However, rather than present a parenting-time schedule to the trial court, Murphy suggested that the parties should figure one out. The evidence clearly showed the parties were unwilling or unable to do that. Corbin's rotating work schedule also presented a challenge to creating an equal parenting-time schedule that would fit both parties' needs. The record contradicts Corbin's claim that "the trial court gave no reasons" for failing to follow Murphy's recommendation. The court expressly recognized Murphy's recommendation, yet the court explained in the order why the circumstances justified allocating to Kaitlyn the greater portion of parenting time.

¶ 56 Corbin also mentions that R.S. wanted to spend more time with him. However, the trial court did not place much weight on R.S.'s preference for equal parenting time, given Murphy's suspicions that Corbin and Sarah may have influenced R.S. Although Corbin denied influencing R.S. in this respect, the court was tasked with assessing witness credibility. *Whitehead*, 2018 IL App (5th) 170380, ¶ 21.

¶ 57 "[C]ourts have traditionally viewed 50/50 joint parenting time with caution." *Virgin*, 2021 IL App (3d) 190650, ¶ 47. This is especially true where the parties have "too much animosity to be able to cooperate." *Virgin*, 2021 IL App (3d) 190650, ¶ 47. The evidence showed that the parties here were unable to cooperate or communicate effectively with each other. Although the parties both had strong relationships with R.S., "[a] 50/50 arrangement is not a substitute for making a difficult choice between two good parents." *Virgin*, 2021 IL App (3d) 190650, ¶ 52. The trial court thoroughly and reasonably evaluated all relevant statutory factors. See 750 ILCS 5/602.7(b)(1)-(17) (West 2020). Under the circumstances, we hold that the court's allocation of parenting time was not against the manifest weight of the evidence.

¶ 58 3. *Right of First Refusal*

¶ 59 Finally, Corbin challenges the order giving the parties a 10-hour right of first refusal for childcare. In presenting this argument, Corbin asserts that Murphy recommended against incorporating a right of first refusal in the parties' parenting plan. Corbin also contends "the parties do not have a good track record of success" using their rights of first refusal, as they both engaged in "time-trumping" to obtain more parenting time. Corbin maintains that, because he works 12-hour shifts and Kaitlyn works 8-hour shifts, the right of first refusal "interferes" only with his parenting time. Corbin further claims that the right of first refusal constitutes an unwarranted

restriction on his parenting time. Corbin complains that the trial court did not recite an analysis of R.S.'s best interests with respect to the issue of first refusal.

¶ 60 The question on appeal is whether ordering a 10-hour right of first refusal was against the manifest weight of the evidence. *Whitehead*, 2018 IL App (5th) 170380, ¶ 40. We hold that the judgment was not against the manifest weight of the evidence.

¶ 61 The parties' prior parenting plan included a two-hour right of first refusal. The evidence was clear that such a short timeframe did not work for the parties, as they both jockeyed for parenting time. As Murphy correctly recognized, the circumstances justified a more limited right of first refusal, if any. The parties' inability to cooperate and communicate arguably weighed against ordering any right of first refusal.

¶ 62 However, there were other relevant circumstances. Specifically, Murphy reported that R.S. felt bullied by her stepsister. R.S. also told Murphy she wanted to spend time with Sarah only when Kaitlyn and Corbin were working. In light of those issues, the 10-hour right of first refusal was reasonable. Essentially, the trial court prioritized R.S. spending time with her mother rather than her stepmother when Corbin has to work during his scheduled parenting time. We recognize that the court did not give Corbin the right of first refusal when Kaitlyn works her typical shift during her scheduled parenting time. However, the issues or concerns justifying a right of first refusal when Corbin worked did not apply when Kaitlyn worked, as Kaitlyn did not have a significant other who provided childcare. Moreover, at least during the school year, R.S. more often than not will be in school on days Kaitlyn works.

¶ 63 Corbin's contention that the right of first refusal constituted a restriction on his parenting time is unpersuasive. The trial court noted in its judgment that the statutory best-interests factor regarding restricting parenting time was "not applicable and cannot be considered."

Additionally, for purposes of part VI of the Illinois Marriage and Dissolution of Marriage Act (Act), "[r]estriction of parenting time" means "any limitation or condition placed on parenting time, including supervision." 750 ILCS 5/600(i) (West 2020). By definition, a right of first refusal is not a limitation or condition placed on parenting time, as such right arises only when a party cannot personally exercise some of his or her scheduled parenting time. See 750 ILCS 5/602.3(b) (West 2020) (defining "right of first refusal" as a right that arises when "a party intends to leave the minor child or children with a substitute child-care provider for a significant period of time").

¶ 64 The Act also treats rights of first refusal differently from restrictions on parenting time. Section 603.10 of the Act (750 ILCS 5/603.10 (West 2020)), which addresses restrictions of parental responsibilities, including parenting time, makes no mention of rights of first refusal. Before restricting parental responsibilities, a trial court must find by a preponderance of the evidence that "a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development." 750 ILCS 5/603.10(a) (West 2020). By contrast, a court may order a right of first refusal whenever doing so is in the minor's best interests. 750 ILCS 5/602.3(a) (West 2020). Thus, a right of first refusal is not a restriction on parenting time.

¶ 65 As part of his argument about a restriction on parenting time, Corbin indicates that the parenting plan entered by the trial court gives him parenting time on weekends he is scheduled to work. These concerns do not justify vacating the right of first refusal. The evidence showed that Corbin works rotating days and shifts. Corbin gets his work schedule for the upcoming fiscal year each September. Thus, the record does not indicate that Corbin's parenting time will always fall on weekends he works. Furthermore, in the months leading up to the evidentiary hearing, Corbin arranged to have many weekends off work, and he was able to take advantage of a provision in a

prior order allowing him to have "extra" parenting time. The fact that Corbin was able to adapt to the prior parenting schedule gives rise to an inference that, going forward, Corbin will not face insurmountable burdens to exercising his allotted parenting time.

¶ 66 Finally, the record does not support Corbin's claim that the trial court failed to perform a best-interests analysis before ordering a right of first refusal. Section 602.3(a) of the Act states: "If the court awards parenting time to both parents under Section 602.7 or 602.8, the court may consider, consistent with the best interests of the child as defined in Section 602.7, whether to award to one or both of the parties the right of first refusal ***." 750 ILCS 5/602.3(a) (West 2020). Here, the court's order contained a detailed application of the 17 factors listed in section 602.7(b) of the Act. Thus, the court considered R.S.'s best interests before ordering a right of first refusal.

¶ 67 Given the deferential standard of review, we affirm the 10-hour right of first refusal. However, we clarify that it is our intention and expectation that the parties will always consider what is best for R.S. before exercising this right. For example, given Corbin's work schedule, Kaitlyn may occasionally have the right to insist on a transfer of parenting time very early in the morning rather than allowing R.S. to sleep in for a few hours at Corbin's house while Sarah is home. R.S. has two loving homes in the same town, and she made her preference known that she does not like the early morning transfers. There is no reason R.S. should have to be transferred between homes at unreasonable hours. Now that these custody issues are resolved, we strongly encourage both parties to put R.S.'s interests first.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the trial court's judgment.

¶ 70 Affirmed.