Illinois Official Reports

Appellate Court

In re Marriage of Kimberly R., 2021 IL App (1st) 201405

Appellate Court Caption	*In re* MARRIAGE OF KIMBERLY R., Petitioner-Appellant, v. GEORGE S., Respondent-Appellee.
District & No.	First District, Third Division No. 1-20-1405
Filed	August 11, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 18-D-004645; the Hon. Diana Rosario, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Alan H. Shifrin, of Alan H. Shifrin & Associates, of Rolling Meadows, for appellant. Michael G. DiDomenico, Sean M. Hamann, and Caroline K. Ruwe, of Lake Toback DiDomenico, of Chicago, for appellee.
Panel	JUSTICE BURKE delivered the judgment of the court, with opinion. Presiding Justice Howse and Justice Ellis concurred in the judgment and opinion.

OPINION

¶ 1 Following a two-day bench trial on petitioner Kimberly R.'s petition to relocate, the trial court entered an order denying Kimberly's request to relocate to Tennessee with her and respondent George S.'s minor child, E.S. Kimberly appeals, arguing that the decision was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Procedural Posture

¶ 4 Kimberly and George were married on July 27, 2013, in Glenview, Illinois. The marriage produced one child, E.S., born on September 5, 2014, who was later diagnosed with autism. Kimberly has one other child, A.R., a daughter born on March 27, 2006, and who is E.S.'s half-sister.

¶ 5 On June 6, 2018, Kimberly filed a *pro se* petition for an emergency order of protection against George, after George called the police on Kimberly's father while he was babysitting E.S. and refused to allow George to take E.S. home. The court granted the emergency order of protection. On June 8, 2018, Kimberly filed a petition for dissolution of marriage (docket No. 2018 D 004645). George also filed a petition for dissolution of marriage a few days later (docket No. 2018 D2 30266). The two cases were consolidated in the domestic relations division Calendar E.

¶ 6 George was initially granted supervised parenting time, and Kimberly was granted sole parental responsibilities. His parenting time was set for Sundays from 11 a.m. to 1 p.m., supervised by Kimberly's father, and later modified to Wednesdays. The order of protection was terminated in an agreed order on August 17, 2018. On that date, the court also entered another order that granted George two hours per week (minimum) of supervised parenting time and appointed a therapist to supervise the visits. On October 17, 2018, the trial court entered an agreed order providing that E.S. would continue to reside with Kimberly, giving Kimberly continued sole parental responsibilities, and granting George supervised parenting time at the sole discretion of the supervising therapist and directing that the terms and conditions of the parenting time were to be determined solely by the therapist.

¶ 7 On March 5, 2019, George filed a petition for allocation of parenting time, arguing that Kimberly and her father have refused to allow George regular parenting time. George also filed a petition for modification of allocation of parenting time on March 15, 2019. The petitions were never heard before the court.

¶ 8 B. Kimberly's Motion to Relocate

¶ 9 Kimberly initially filed a notice of intent to relocate herself and E.S. to Tennessee, pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (West 2018)) on June 18, 2019. George filed an objection. Kimberly filed a petition to relocate on July 25, 2019, and subsequently filed another petition to relocate on March 30, 2020.[1]

[1]Kimberly filed a second motion due to delays in having her first motion heard because of the COVID-19 pandemic.

¶ 10 Kimberly asserted that the statutory factors set forth in section 609.2 weighed in favor of relocation. She argued that George has not seen E.S. since November 2018 due to George's own actions or inactions in failing to abide by the supervised parenting time orders of the court and that George refuses to acknowledge that E.S. has autism and cannot interact with him appropriately. Kimberly asserted that on November 7, 2018, George had a supervised parenting time visit scheduled, but it was canceled because E.S. was ill. Kimberly alleged that George became enraged, causing the supervising therapist, Dr. Carol Reid, of Associates in Human Development Counseling, to require George to undergo a psychological evaluation before reintroduction to E.S. and supervised visits could occur. Kimberly asserted that George failed to obtain this evaluation in a timely manner. Kimberly also argued (1) that there is a better school, Illuminate Academy, for E.S.'s special needs in Tennessee, (2) that Kimberly's parents provide substantial support in caring for E.S. while Kimberly works, and they also plan to move to Tennessee, (3) that Kimberly's sister already lives in Tennessee, (4) that Kimberly plans to open a Mathnasium near Smyrna, Tennessee, (5) that she was granted leave to relocate A.R. in a separate case, (6) that A.R. would attend a magnet high school in Tennessee that better meets her needs, as it is a "feeder" school for Vanderbilt University, (7) that Kimberly would attend classes at an autism institute in Tennessee in order to better meet E.S.'s needs, and (8) that George could have parenting time in Tennessee.

¶ 11 In response, George argued that Kimberly and her father improperly imposed limitations on his parenting time. George further asserted that he was not informed that E.S. was sick when his visit on November 7, 2018, was canceled; he thought Kimberly refused to bring E.S. for his parental visit. George argued that he was informed that he could seek a psychological evaluation from a different therapist that took his insurance, but Dr. Reid did not inform him of any criteria or written directions to present to the new evaluator. George acknowledged that E.S. has autism but asserted that he "was confused as to the extent" and has never been provided with diagnostic test results or recommendations from E.S.'s therapists. George asserted that he has since taken a course and read about autism. George asserted that there were schools and facilities in Illinois that could provide appropriate support for E.S., that Kimberly had not spoken to her sister in years, that E.S. had a large extended family residing in Illinois, that A.R. has access to high quality schools in Illinois, that moving E.S. to Tennessee would further impair his relationship with George and thwart his ability to have consistent parenting time, and that relocation to a new place and new therapists would be disruptive to E.S.'s routine and development.

¶ 12 C. Trial on Kimberly's Motion to Relocate

¶ 13 The court held a trial on Kimberly's motion to relocate on August 18 and 19, 2020. The parties stipulated to the admission of (1) a June 29, 2020, psychological evaluation report by Dr. Reid regarding George,[2] (2) a diagnostic evaluation performed by Dr. Michael Mihajlovic of Caravel Autism Health dated November 27, 2018, which diagnosed E.S. with autism and recommended various therapies, (3) a brochure from Illuminate Academy in Tennessee, (4) a U.S. News and World Report comparison of Vanderbilt University and University of Illinois

[2]In a March 13, 2020, order, the trial court directed each party to pay half of the cost of a psychological evaluation of George by Dr. Reid.

Urbana-Champaign, and (5) the transcript from Our Family Wizard from August 21, 2018, to May 28, 2020, showing the communications between Kimberly and George.

¶ 14 In the June 29, 2020, report, Dr. Reid indicated that when the supervised visit was canceled on November 7, 2018, George's reaction raised concerns about his ability to manage his anger and emotions. Dr. Reid therefore referred George for a psychological evaluation. He was initially referred to Dr. Finn, but George obtained an evaluation by a different evaluator. However, this evaluator failed to take into account the reasons for his referral for an evaluation. George was thus referred for a second evaluation, which was performed by Dr. Reid in March 2020. She examined George's level of emotional functioning, his coping skills, and his understanding of his son's diagnosis and special needs. Dr. Reid recommended that, before George could be reintroduced to E.S. and enjoy supervised visitations, George must complete an anger-management program and individual therapy to address his coping skills, attend parenting education to improve his communication skills, and have supervised visitations with his son with a therapist who specializes in autism and can assist him in understanding E.S.'s condition.

¶ 15 1. Kimberly

¶ 16 Kimberly testified in her case-in-chief that E.S. was born on September 5, 2014, and would turn six years old in September 2020. Her 14-year-old daughter, A.R., is entering her freshmen year of high school. Kimberly was granted permission to move A.R. to Tennessee. She testified that she talked about moving to Tennessee with George before they were married, and George stated he was willing to move.

¶ 17 Kimberly recounted two incidents of domestic violence during her marriage to George. She testified that the incidents occurred when she confronted George about smoking cigarettes or marijuana. The first incident was when she told George to stop smoking. She was three months pregnant, and he pulled her off the bed by pulling the blanket she was laying on. She hit her cheek and got a bruise; A.R. took a photograph of the bruise. She recounted another incident on July 24, 2016, after she returned from a conference in Texas when he grabbed her arm, twisted it, and pushed her. She also took pictures of this injury. Kimberly testified that she once found a knife under George's pillow. She recounted another incident when A.R. called Kimberly's father to the house because Kimberly and George were arguing about him smoking cigarettes and George was screaming. George stated that he would commit suicide before he would ever leave the house. Kimberly testified that at some point she started sleeping in her office with the door locked because she was scared of George. She testified that he also had started to threaten A.R. She testified that George suggested marriage counseling, but he went to only a few sessions.

¶ 18 She sought the emergency order of protection in 2018 after George called the police on her father. The order of protection was eventually terminated by agreement. After George moved out, she cleaned his room and found a marijuana pipe.

¶ 19 She testified that when E.S. was a baby, he cried all the time and avoided the light and looking at people. She testified that when E.S. cried, George would state, "Why is he crying? Shut the kid up." When E.S. was 18 months old, he started flapping his hands, spinning, having meltdowns and night terrors, and screaming. She told George that she believed he was autistic. George did not agree. Kimberly had E.S. tested for autism when he was 18 months old, and she showed the report to George, but he refused to believe he was autistic. She also told him

about E.S.'s doctor appointments, but George was always working. Kimberly testified that there are four levels of autism, with the fourth being the most severe, and E.S. fell between the third and fourth level. Kimberly started doing a lot of research into autism. E.S. receives behavior therapy, occupational therapy, and speech therapy. Kimberly testified that due to his autism, E.S. is on a strict schedule and becomes upset if there are any deviations.

¶ 20 Kimberly denied that she placed restrictions on George's relationship with E.S. following his diagnosis. She testified that E.S. "never really took to George" and would push him away. She testified that if she left the room, E.S. would scream, cry, or chase after her. She has never seen George strike E.S., but she was concerned that George would hit E.S. because once, when E.S. knocked off his glasses and they broke, George became upset and "ran upstairs stomping and shaking his hands and swearing like crazy." She would not let George drive E.S. in the car alone because George has road rage. Kimberly testified that on Sundays, they would go to church and then she would run errands with E.S. afterward. She testified that George was welcome to come, but he chose not to because he was too tired. She testified that she did not leave E.S. home with George on those occasions because George was too tired. Kimberly testified that she has owned a Mathnasium in Illinois since August 2016; when she works, her father watches E.S.

¶ 21 She testified that she stopped taking E.S. to family gatherings on both sides of their family because there were too many people and too much noise, which would upset E.S. She testified that E.S. did not behave normally and runs from other children. He is always next to Kimberly, not because she forces him to be, but because he wants to be.

¶ 22 Regarding George's parental visitations after she instituted divorce proceedings, Kimberly testified that, initially, George's visitations were supposed to be for two hours. Kimberly testified that she shortened the visitations to one hour because A.R.'s therapist told her that two hours was too long for an autistic child. They were also supposed to be outside, although the court order did not state this. She also found rules on a website about visitations and printed them off, although the court order did not require such rules to be followed during the visits. Kimberly testified that she implemented the rules regarding hugging, kissing, and picture taking during George's visitations because she did not want E.S. to become upset. Due to conflict with George, her father refused to supervise the visits any longer. Another supervisor was appointed, but she later indicated that she was not qualified. The parties then found Dr. Reid to supervise visits, although none had yet occurred.

¶ 23 Kimberly acknowledged that George has enrolled in anger management classes and that he has completed his required evaluation with Dr. Reid in order to resume supervised parenting time with E.S. However, she has not yet scheduled the required therapy session between E.S. and Dr. Reid in order for reintroduction of E.S. to George to occur and the supervised visitations to resume. She testified that the first time Dr. Reid tried to assess E.S. as part of the plan to reintroduce E.S. to George, Dr. Reid was running late for the Zoom meeting and Kimberly could not wait because she had a webinar at work. The second time it was scheduled, E.S. fell asleep in the car on the way to the meeting. Kimberly testified that up until seeing the certificate indicating George had recently taken a class about autism, he had never acknowledged that E.S. was autistic.

¶ 24 Kimberly testified that George has asked her through Our Family Wizard for pictures of E.S. and she has tried to send them when she can take pictures of him. Since they separated in 2018, she has sent two pictures. She testified that it is difficult because E.S. becomes upset and

has a tantrum. She testified that George has also asked her through Our Family Wizard what E.S. likes to eat.

¶ 25 Kimberly testified that E.S. currently receives services four days a week, up to 15 hours. Kimberly testified that the behavioral therapy occurs in her home, but the speech and occupational therapies occur over Zoom. She testified that she called three schools in Illinois about E.S. attending in person, but they would require him to wear a mask due to COVID, and E.S. could not tolerate wearing a mask due to his autism. Trying to get him to wear one has been part of his therapy, but it was "not really working out."

¶ 26 She identified a school in Tennessee, Illuminate Academy, that E.S. could attend in-person where he would receive occupational therapy, speech therapy, and behavioral therapy at the school. He would not be required to wear a mask. There are four children and two adults per classroom. She testified that of the three schools she researched in Illinois, they do not have behavioral therapy available in school. She testified that the Illinois schools offer Individualized Education Programs but would place E.S. in a regular classroom based on his age, even if that grade is years ahead of where he is. Illuminate Academy would keep E.S. "where he's supposed to be" academically. Kimberly testified that there was no school in Illinois like the school she found in Tennessee, where the school would understand that the lights are too bright for him or where there are special sensory and quiet rooms to help an autistic child calm down. She testified that if she moved to Tennessee, all of E.S.'s therapists would change.

¶ 27 She believed that the schools in Illinois were not as good as the schools in Tennessee for both of her children. When presented with an article from the website Autism Speaks, indicating that Tennessee was one of the worst places to raise a child with autism and Chicago was one of the best, Kimberly testified that the article was nine years old and she has researched the issue and statistics constantly and believes the Nashville and Murfreesboro areas were better than Chicago. When asked if she believed that Illuminate Academy would provide a better speech therapy curriculum for E.S., Kimberly responded that the therapists there would be constantly assessing him. In Illinois, she had to go to a specialty place for this.

¶ 28 Kimberly testified that there are two private schools in Tennessee that have programs which would allow A.R. to start attending Vanderbilt University, her chosen college, as a high school student. Kimberly testified that A.R. is a gifted student and wants to be a veterinarian and that Vanderbilt University has a good program. Kimberly testified that E.S. loves to play games with A.R. and they have a "brother/sister" relationship.

¶ 29 Kimberly indicated that she has a potential employment opportunity with Illuminate Academy in Tennessee, or she may open another Mathnasium in Tennessee, but she has not yet decided due to COVID. She testified that she has a sister who lives in Tennessee and would like to see her more. She has a cousin in Illinois, but her cousin is also planning to move to Tennessee. She has looked at houses over Zoom with her realtor. Her parents also plan to move to Tennessee. She testified that if she were not given permission to move E.S. to Tennessee, her parents would likely also remain in Illinois to support her. She testified that her mother's family already lives in Tennessee. Her father also has a sister who is moving to Tennessee.

¶ 30 Kimberly testified that she is willing to bring E.S. back to Illinois for visitations every other month and she is supportive of George coming to Tennessee for visitations. She testified that E.S. does not like to ride in the car for longer than 15 minutes. After 15 minutes, he will start to have a meltdown and cry, scream, push, or roll down the windows. She likes to have

someone else in the car to help calm him down, so she would make the drive from Tennessee with A.R. or one of her parents. She testified that the drive is eight or nine hours, but it would take longer with E.S. and she would probably drive half of it and stay in a hotel. If she moved to Tennessee, she also planned to take classes about autism.

¶ 31 With regard to George's family, Kimberly testified that they did not believe he was autistic, so a relationship with them was not acceptable. If they came to believe he was autistic, they could visit him in Tennessee.

¶ 32 2. Anthony N.

¶ 33 Anthony N., Kimberly's father, owns the house that Kimberly lives in, pays the taxes and insurance, and lives close by. Anthony testified that George told him that he had been verbally and physically abused by his father as a child. Anthony, who is a retired Chicago police officer and used to work in the domestic violence area, testified that he was afraid that George would hurt E.S. due to having been abused as a child himself and because of E.S.'s autistic condition. Anthony recalled one incident in the fall of 2018, when A.R. called him because Kimberly and George were "screaming" at each other. When he arrived, George was screaming and told Anthony, "just wait and see," and Kimberly informed Anthony that George said he was going to go in the garage and commit suicide.

¶ 34 Anthony saw E.S. almost every day and babysat him frequently while Kimberly worked. He testified that George was not present very often when he watched E.S., and, when George was present, there was not much interaction between E.S. and George. Anthony would not allow George to take E.S. home because of concerns about George's temper. At any rate, George never asked to take E.S. home.

¶ 35 Anthony testified that, after the divorce proceedings commenced, he supervised visits between George and E.S. He testified that Kimberly informed him that the visits were supposed to last one and a half hours, not two hours, and it was supposed to be outside, not inside his house. He testified that Kimberly gave him rules that George had to follow during the visits, such as no picture taking or hugging. Kimberly found them online when researching rules to follow for supervised visits. Anthony testified that E.S. does not like having his picture taken and will run away or have a meltdown if forced to and that he also does not like to give or receive hugs and never gives kisses. Anthony did not inform George about the rules beforehand, and George was upset about them. As a result, Anthony decided not to supervise the visits anymore.

¶ 36 Anthony testified that he would like to move to Tennessee because the winters are shorter, he "love[s] the country," the property taxes are lower, the cost of living is cheaper, and his other daughter lives there. He testified that he and his wife have been thinking of moving there for many years. He has looked at houses in Murfreesboro online, and he drove around the area once a year ago.

¶ 37 3. George

¶ 38 George testified as an adverse witness in Kimberly's case-in-chief and testified on direct in his own case-in-chief. George acknowledged that E.S. has autism. He testified that Kimberly initially had E.S. diagnosed with autism without his knowledge and he thought E.S. acted "like a normal three, four-year-old to me." George testified that Kimberly informed him in 2017 that

she had E.S. diagnosed with autism one year before but did not tell him. He never saw any reports regarding the diagnosis until the divorce proceedings began. George testified that he now believes that E.S. has autism and came to this conclusion after reviewing his doctors' notes. He has also taken steps to educate himself about autism, and he took an online course about autism about a month before trial.

¶ 39 George testified that when he lived with Kimberly and E.S. from E.S.'s birth to approximately 2017, he did not notice anything unusual about E.S.'s behavior. He denied that E.S. cried a lot or that George ever told Kimberly to "shut him up." George testified that he saw E.S. have only two meltdowns in 2016 and 2017. George testified that at a birthday party for someone in his extended family in late 2016 or early 2017, E.S. was "fine" and did not seem bothered by all the people, loud noises, and music. E.S. "seemed to enjoy it" and wanted to join in. George testified that they also attended a block party with E.S. in August 2016, where there were lots of people and a stage with a band playing, and E.S. did not seem affected by this.

¶ 40 George testified that he believes Kimberly has alienated him from E.S. George testified that he "was never allowed to be alone with" E.S., even in their own house. George testified that E.S. seemed "fine" when he would play with him at home, but Kimberly had "a lot of rules" regarding what he could and could not do with him. George denied that E.S. would start to cry if Kimberly left the room. George testified that E.S. used to give him hugs and kisses and denied that E.S. did not like to be touched. George testified that on Sundays after church, Kimberly would leave with E.S. and A.R., and not return home until late in the day. She would not tell him where she was going. He would text her to ask if she wanted to do an activity together, but she would not respond until hours later. George testified that Kimberly would not allow him to feed E.S., change his diaper, help with potty training, take him for a walk or to the park, take him for a car ride, or take him to see his extended family. George agreed that Kimberly always tried to keep E.S. on a schedule, but George did not like this because he would not get to see E.S. due to George's work schedule. He did not know at that time that E.S. had autism or how important having a schedule was for children with autism.

¶ 41 Regarding Kimberly's father, George testified that they initially had a good relationship. However, Anthony interfered with George's time with E.S. because he babysat E.S. and would not allow George to take E.S. home after work from 2016 onward. George testified that he "asked all the time to take my son home," but Anthony told George that he did not trust him.

¶ 42 George testified that, at some point during the marriage, he began sleeping in his own room and Kimberly slept in a different room with E.S. He denied that he would come home from work and go up to his room and drink and smoke cannabis. He denied that he was depressed or suicidal, that he had ever told Kimberly's father that he was going to commit suicide, or that his father had beaten him with a belt as a child. He testified that he owned a hunting knife for camping but denied that he ever kept it under his pillow. He testified that he kept the knife put away in a drawer in his room. George testified that the incident where he allegedly pulled Kimberly off the bed when she was three months pregnant "never happened." He also denied that the incident Kimberly testified about when she returned from a conference on July 24, 2016, and he twisted her arm ever happened. He testified that arguments about his smoking never led to any physical abuse. Regarding the incident where Kimberly testified that E.S. knocked off George's glasses, George testified that he and E.S. were playing around and he did not get upset and storm upstairs. He has never hit E.S. He also denied having road rage.

¶ 43 He testified that in June 2018, a few days before Kimberly obtained the order of protection, George arrived at home at 4:30 p.m. and heard E.S. "raising his voice" in Anthony's backyard. He looked over and saw Anthony "not gently" placing E.S. in the swing set with an "aggressive sit down hard," so George went over there. Anthony asked George what he was doing there. George told him he wanted to see E.S. George testified that Anthony pointed his fingers at George's face and told him "you had two years, buddy." George called the police. George testified that Kimberly arrived and the police gave E.S. to her. The next day George was served with the order of protection.

¶ 44 George last saw E.S. in November of 2018. The visit was approximately one hour, and E.S., George, and a therapist were present. George testified that E.S. was smiling and they played together. The parties later entered an agreed order that he could have parenting time supervised by Dr. Reid.

¶ 45 Regarding the next supervised visit that was scheduled for November 7, 2018, George testified that he received a phone call from Dr. Reid while driving to the visit, informing him that Kimberly had called and stated that E.S. was ill, so Dr. Reid canceled the visit. George never received any doctor's notes regarding the illness. He denied that he threatened to "get" Kimberly or that she was "going to pay for this." However, Dr. Reid recommended that George obtain a psychological evaluation to determine his level of anger management.

¶ 46 George obtained an evaluation by Dr. O'Donnell because this doctor took his insurance. It was rejected by Dr. Reid because she had not been contacted by Dr. O'Donnell about the evaluation first. George testified that he was not instructed that the evaluator had to contact Dr. Reid first. George did not obtain another evaluation until the trial court ordered the parties in March 2020 to each pay for half of an evaluation by Dr. Reid.

¶ 47 George testified that he did not believe he needed counseling or anger management therapy, although he was receiving them. He stated that everything that has happened was "both our faults." He is enrolled in anger management classes and has learned about how to express his anger, how to talk about it with other people, and how to manage it and stay calm. He recognizes he has anger issues and says he will continue to attend the classes until the court or therapist instructs otherwise. George testified that since he last saw E.S., he has done everything the court and psychologists have required.

¶ 48 George testified that he has used Our Family Wizard to communicate with Kimberly to try to get information and updates about E.S. and stay involved in his life since he has not been allowed to see him. He sent her messages every other day or every three days. George believes he could be a good father and understands that being a father to an autistic child will require "a lot of work." George testified that he wants to "dedicate myself to my son. I love my son and I miss my son so, so much."

¶ 49 George testified that he is against Kimberly moving to Tennessee because he would not be able to develop his relationship with E.S. in another state. He testified that he first learned about Kimberly's plans to move to Tennessee when she filed the petition to relocate. He testified that they had previously discussed moving during their marriage, but he told her he could not move because all of his family was in Illinois. He testified that the first he learned of any proposed parenting plan related to relocation was right before trial. He testified that Kimberly's proposal that he see E.S. every other month if E.S. moved to Tennessee did not seem fair to him.

¶ 50 4. George's Family

¶ 51 George presented the testimony of his brother, two sisters, and his father. His family members testified that George was not a violent person, he was a good father to E.S., E.S. seemed to be a normal child who did not have meltdowns, and Kimberly stopped bringing E.S. to family gatherings around 2016 or 2017.

¶ 52 5. Kimberly

¶ 53 In rebuttal, Kimberly testified that one of George's sisters had indicated that George was "mean," that George's father once stated that he could babysit E.S. and knew "how to control kids" by shaking them "really hard," and that George's family was welcome to visit in Tennessee if they accepted that he had autism.

¶ 54 Following the parties' closing arguments, the trial court took the matter under advisement.

¶ 55 While the matter was pending, George filed an emergency petition for rule to show cause, alleging that Kimberly failed to comply with court orders related to the reintroduction of E.S. to George and George's parenting time. The trial court granted the petition and continued the matter.

¶ 56 D. Trial Court's Decision

¶ 57 The trial court entered a written order on September 25, 2020, denying Kimberly's petition to relocate. In reviewing the evidence against the 11 statutory factors, the trial court found as follows.

¶ 58 1. Circumstances and reasons for relocation: The trial court found this factor did not weigh in favor or against either parent. It found that Kimberly desired to move in order to enroll A.R. in a magnet school to increase her chances at being admitted into Vanderbilt University, but neither Kimberly nor her parents have taken concrete steps towards moving to Tennessee.

¶ 59 2. Reasons a parent is objecting to the relocation: The trial court found this factor did not weigh in favor or against either parent, although it noted that George alleged that relocation would further negatively affect his relationship with E.S.

¶ 60 3. History and quality of each parent's relationship with the child and whether a parent has failed or refused to exercise parental responsibilities allocated to him: The trial court found that this factor did not weigh in favor or against either parent. The trial court found that both parties contributed to the delay in reintroducing E.S. to George. Supervised visits with Kimberly's father ended because George and her father could not get along, but Kimberly exacerbated the issue by unilaterally changing the amount of time George was allowed to visit and setting restrictions on the visits. George also delayed in obtaining his required evaluation, and Kimberly also stalled the reintroduction efforts.

¶ 61 4. Education opportunities: The court held that this factor did not weigh in favor or against either party. Kimberly testified about the therapies E.S. currently receives and a private school in Tennessee that is dedicated to children with autism, Illuminate Academy, and offers these therapies in school. The court found that when questioned about the differences between the Tennessee school and Illinois schools, Kimberly gave vague answers and focused on the educational opportunities available to A.R.

¶ 62 5. Presence or absence of extended family at the existing location and the new location: The trial court held that this factor weighed in favor of George because all of his extended

family and most of Kimberly's extended family, including her father who provides significant support in caring for E.S., resides in Illinois and did not have concrete plans to move to Tennessee.

¶ 63 6. Impact of relocation on the child: The trial court held that this factor weighed in favor of George, citing Kimberly's testimony regarding the importance of routine for a child with autism.

¶ 64 7. Whether the court will be able to fashion a reasonable allocation of parental responsibilities between parents if relocation occurs: The trial court held that this factor favored George, noting that George had completed his required evaluation, but Kimberly had stalled the process by not scheduling a time for E.S. to meet with the therapist, and citing the parties' prior difficulties in cooperating or communicating.

¶ 65 8. The wishes of the child: The trial court held that this factor does not weigh in favor or against either party because there was no evidence presented as to E.S.'s wishes, and the trial court did not conduct an *in camera* review, given E.S.'s young age and autism.

¶ 66 9. Possible arrangements for the exercise of parental responsibilities considering the parents' resources and circumstances and the child's developmental level: The trial court concluded that this factor weighed in favor of George. It noted that George had completed all the required steps to be reintroduced to E.S., but Kimberly had stalled the final steps, and that the parties had never submitted a proposed parenting plan. Although Kimberly testified that she would drive E.S. back to Illinois to visit George, her testimony was not clear as to whether this would occur every month, every other month, or if George would alternate driving to Tennessee. Further, this proposal presented significant challenges, as Kimberly testified that E.S. cannot handle being in the car for more than 15 minutes and the drive between Tennessee and Chicago was eight to nine hours, required an overnight stay, and coordination with the schedules of A.R. or Kimberly's father so that Kimberly had assistance on the drive.

¶ 67 10. Minimization of the impairment to the parent-child relationship caused by relocation: The trial court held that this factor weighed in favor of George. The court found that Kimberly's actions in relation to George's parenting time, her refusal to bring E.S. around his family, and her stalling in having E.S. see a therapist before he can be reintroduced to George, demonstrated that she was not willing to minimize the impact relocation would have on his relationship with E.S.

¶ 68 11. Any other relevant factors bearing on the child's best interests: The trial court found that George's objection to the relocation was based on his desire to have a relationship with his son and this weighed in favor of George. Further, the fact that Kimberly had no set plans for moving to Tennessee, did not have concrete job opportunities there, had not seen any houses in person, and did not have concrete employment prospects weighed in favor of George.

¶ 69 In ruling, the trial court noted that the paramount consideration was whether relocation was in the best interests of E.S., not anyone else. The trial court found that it was not in E.S.'s best interests to locate to Tennessee.

¶ 70 The trial court entered a final and appealable judgment for dissolution of marriage on December 18, 2020. Kimberly filed a timely notice of appeal.

¶ 71 II. ANALYSIS

¶ 72 Kimberly asserts that the trial court's order denying her petition to relocate constitutes a manifest injustice and is contrary to E.S.'s best interests. Kimberly contends that the trial court's assessment of the statutory factors related to a motion to relocate was manifestly erroneous.

¶ 73 A. Standard of Review

¶ 74 In adjudicating a relocation petition filed under section 609.2(g) of the Act (750 ILCS 5/609.2(g) (West 2018)), the paramount consideration is the best interests of the children. *In re Marriage of Fatkin*, 2019 IL 123602, ¶ 32 (citing 750 ILCS 5/609.2(g) (West 2016)). Our supreme court has explained that a best-interests analysis " 'cannot be reduced to a simple bright-line test' and that a ruling on the best interests of a child 'must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case.' " *Id.* (quoting *In re Marriage of Eckert*, 119 Ill. 2d 316, 326 (1988)). As such, "other relocation cases are of limited value for purposes of comparison because the result in each case depends on the unique facts and circumstances of the case." *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 71. Due to the case-by-case nature of this endeavor,

> "the result cannot be reduced to a simple tally of which party 'won' a majority of the enumerated factors; instead, because some factors in a particular case may weigh more heavily than others, the trial court must consider all factors and evidence touching on the issue and must arrive at a reasonable result." *Id.*

¶ 75 In reviewing a trial court's best interests determination on appeal, this court should not reverse that determination "unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." (Internal quotation marks omitted.) *Fatkin*, 2019 IL 123602, ¶ 32. "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. This deferential standard is appropriate because it recognizes that the trial court, as the trier of fact, had a superior opportunity "to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities." (Internal quotation marks omitted.) *Fatkin*, 2019 IL 123602, ¶ 32. As such, the presumption that arises "in favor of the result reached by the trial court is always strong and compelling in this type of case." (Internal quotation marks omitted.) *Id.*

¶ 76 With these aspects of review in mind, we turn to the trial court's decision here.

¶ 77 B. Statutory Factors

¶ 78 Pursuant to section 609.2(f), the parent wishing to relocate in a contested relocation case must file a petition seeking court approval and bears "the burden of proving that the relocation is in the best interests of the child, as measured by the factors set forth in section 609.2(g)." *Levites*, 2021 IL App (2d) 200552, ¶ 57. Thus, the parent seeking relocation in a contested case bears the

> "burden of production, in that the relocating parent must petition to relocate and produce evidence on the child's best interests, and a burden of persuasion, in that the

parent seeking relocation must obtain the trial court's permission to relocate by convincing the court that it is in the child's best interests to relocate." *Id.* ¶ 61.

"The parent seeking removal has the burden of proving, by a preponderance of the evidence, that removal would be in the child's best interest." *P.D.*, 2017 IL App (2d) 170355, ¶ 15.

¶ 79 The statutory factors outlined in section 609.2(g) are as follows:

> "(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) (West 2018).

¶ 80 We review each of these factors in turn. Notably, Kimberly does not contest the trial court's findings as to the first three statutory factors. We address them briefly, given the nature of the case-by-case analysis required under the circumstances.

¶ 81 1. Circumstances and Reasons for Relocation

¶ 82 The trial court found that this factor did not weigh for or against either parent. Given our review of the record, we cannot say that the trial court's decision is clearly against the manifest weight of the evidence. *Fatkin*, 2019 IL 123602, ¶ 32. The trial court accurately observed that based on the testimony, Kimberly and her father had not taken concrete steps toward moving to Tennessee, such as looking at houses in person, and had no specific plans for the move. Kimberly and George had discussed moving to Tennessee prior to their marriage, but George did not agree to move, as all of his family was in Illinois and they did not discuss it further after they had E.S. Further, Kimberly's primary reason for the move was so that A.R. could attend a magnet high school for Vanderbilt University. We cannot say that this evidence clearly calls for the opposite conclusion or that the decision rests on clearly erroneous factual findings. *P.D.*, 2017 IL App (2d) 170355, ¶ 18.

¶ 83 2. Reasons Why a Parent Is Objecting to Relocation

¶ 84 The trial court found that this factor did not weigh in favor or against either party. George objected to relocation because he believed it would negatively impact his relationship with E.S., given that Kimberly has made it difficult for him to see E.S. or exercise his parenting time while the parties have remained in Illinois. George testified to Kimberly's refusal to allow George to take E.S. home from her father's house, to be alone with E.S., or to take him to visit George's extended family and has stated that Kimberly has made it difficult for George to exercise his parenting time. While we find no manifest error in the trial court's conclusion, we could just as easily have found that this factor actually weighs in favor of George and denying the relocation petition. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 85 3. History and Quality of Each Parent's Relationship With the Child

¶ 86 The third factor examines "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." 750 ILCS 5/609.2(g)(3) (West 2018). The trial court accurately recounted the testimony indicating that Kimberly was the primary caregiver for E.S., was primarily responsible for doctor appointments, took the lead in researching autism and insuring E.S. had proper therapies, and was understandably protective of him. However, the testimony from George and his family and also from Kimberly demonstrated a history of Kimberly refusing to allow George to have time with E.S., be alone with E.S., or bring E.S. around George's family even before divorce proceedings began. Moreover, the evidence showed that Kimberly instituted rules on George's parenting time that were not required by the court or the supervising therapist, and she stalled in completing the necessary steps so that E.S. could be reintroduced to George and George could exercise his supervised parenting time, that is, she failed to schedule the appointment between E.S. and the therapist. However, George also delayed in taking the necessary steps so that he could exercise his supervised parenting time. As such, it was the fault of both parties that George had not had contact with E.S. since November 2018. George presented testimonial evidence that he was a good father and desired to have a relationship with E.S. and had educated himself about autism. We find the trial court's determination is an accurate portrayal of the hearing testimony and find no manifest error in the trial court's decision that this factor does not weigh in favor or against either parent. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 87 4. Educational Opportunities for the Child

¶ 88 As to the next factor, the education opportunities for E.S. in Illinois and in Tennessee, the trial court found that this factor did not weigh in favor or against relocation, as the difference between educational programs in the two states was unclear. Kimberly argues that this conclusion is erroneous because her evidence—consisting of her own testimony and a brochure about Illuminate Academy—showed that the Tennessee school was far superior.

¶ 89 Based on the evidence presented, we agree with the trial court that this factor does not weigh in favor or against relocation. We cannot say that the evidence clearly called for the opposite conclusion or that the decision rested on clearly erroneous factual findings. *P.D.*, 2017 IL App (2d) 170355, ¶ 18. The trial court found that E.S. currently receives three types of therapy—behavioral therapy, speech therapy, and occupational therapy—in Illinois. Kimberly

testified that the school she identified in Tennessee, Illuminate Academy, specializes in autism and offers all three therapies in-school, has small class sizes, and does not require E.S. to wear a mask. The trial court found it was unclear how much research Kimberly had done into E.S.'s educational opportunities in Illinois, as she gave vague, generalized answers when questioned about the differences. She noted that the three schools she investigated did not offer behavioral therapy in school. Kimberly testified that E.S. would have to attend a "specialty place" in Illinois to receive the same type of education as the school in Tennessee offers. However, as the trial court noted, Illuminate Academy is a specialized school. Additionally, the court noted that Kimberly primarily focused on the educational opportunities of A.R., but the trial court must decide what is in the best interests of E.S. The trial court's assessment of this factor is not clearly against the manifest weight of the evidence. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 90 Kimberly contends that George failed to submit any evidence to rebut her evidence regarding the educational opportunities. However, Kimberly's argument overlooks her burden of proof as the parent seeking relocation, that is, she bears the

> "burden of production, in that the relocating parent must petition to relocate and produce evidence on the child's best interests, and a burden of persuasion, in that the parent seeking relocation must obtain the trial court's permission to relocate by convincing the court that it is in the child's best interests to relocate." *Levites*, 2021 IL App (2d) 200552, ¶ 61.

¶ 91 5. Presence or Absence of Extended Family in Illinois and Tennessee

¶ 92 Kimberly argues that the trial court improperly weighed the fifth factor regarding extended family because there was no evidence that George's extended family took any affirmative action in attempting to be involved in E.S.'s life in Illinois and she has a sister in Tennessee and Kimberly and her father are both interested in relocating to Tennessee.

¶ 93 Upon on review of the testimony, we find no manifest error in the trial court's conclusion that this factor weighs in favor of George and against relocation. The evidence indicated that George's entire extended family lived in Illinois and is a close-knit family that regularly gets together and wishes to have a relationship with E.S. His extended family includes several cousins around the same age as E.S. Although Kimberly argues that George's family took no "affirmative action" to be involved with E.S., the evidence showed that Kimberly stopped bringing E.S. to any of George's extended family gatherings starting in 2016 or 2017 and she was reluctant to communicate with them. Kimberly testified that her sister and some of her extended family on her mother's side reside in Tennessee. However, Kimberly also has extended family in Illinois. As the trial court observed, although Anthony N. testified that he would move to Tennessee, neither he nor Kimberly had taken any concrete steps toward doing so other than viewing some houses online. Accordingly, we cannot say that this evidence clearly called for the opposite conclusion or that the trial court's determination rested on clearly or indisputably erroneous factual findings. *P.D.*, 2017 IL App (2d) 170355, ¶ 18.

¶ 94 6. Anticipated Impact of the Relocation on the Child

¶ 95 Kimberly next contends that the trial court manifestly erred in finding that the sixth factor weighed in favor of George and against relocation. Kimberly argues that the trial court's finding was speculative, as George failed to present evidence that a routine for E.S. could not be established in Tennessee. As we previously stated, such an argument overlooks Kimberly's

burden of proof as the parent seeking relocation. *Levites*, 2021 IL App (2d) 200552, ¶ 57. Moreover, the court was tasked with determining specifically what was in E.S.'s best interests. Thus, Kimberly's assertion that any relocation would have a significant impact on "any" child is not well taken. The evidence showed that routine was especially important for a child with autism and any changes or alterations in E.S.'s routine were extremely difficult for him to cope with. Relocation would obviously entail E.S. having to adapt to not only a new routine, but also a new neighborhood, new house and living situation, new therapists, and a new school. As such, we cannot say that the trial court's decision was manifestly erroneous. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 96 7. Reasonable Allocation of Parental Responsibilities Between All Parents

¶ 97 Kimberly argues that the trial court manifestly erred in finding that the seventh factor weighed in favor of George. This factors concerns "whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs." *P.D.*, 2017 IL App (2d) 170355, ¶ 37. The trial court observed that pursuant to court orders, George was granted supervised visitations if he completed certain steps. Although George completed all his required steps for reintroduction, however, Kimberly "stalled the process" in failing to schedule a time for E.S. to meet with the therapist. The trial court accurately observed that the parties had a history of being unable to effectively cooperate or communicate and that it was doubtful this would improve with greater distance. Kimberly argues that George restricted his parenting responsibilities by agreement in several agreed court orders. However, in addition to completing the required steps to resume parenting time, George also filed petitions to modify parenting allocation and testified to the fact that his work schedule made it difficult for him to see E.S. or be involved in his doctor appointments or other care. Considering the record before us, we find that the trial court's determination was not against the manifest weight of the evidence.

¶ 98 8. Wishes of the Child

¶ 99 The trial court found that the eighth factor did not weigh in favor or against either party, as there was no evidence offered regarding E.S.'s wishes and the parties did not request the court undertake an *in camera* interview of E.S. Further, given his young age and autistic condition, it was unlikely that E.S. would have the ability to express reasoned and independent preferences. We find no error in this determination.

¶ 100 9. Possible Arrangements for the Exercise of Parental Responsibilities

¶ 101 The ninth factor concerns "possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child." (Internal quotation marks omitted.) *Id.* ¶ 42. The trial court determined that this factor weighed in favor of George and against relocation. As noted, the trial evidence showed that George had completed the required steps to be reintroduced to E.S. and enjoy parenting time—George had engaged in education about autism and undergone a psychological evaluation and anger management treatment—but Kimberly stalled the effort toward reintroduction by failing to schedule a time for E.S. to meet with the therapist.

¶ 102 Further, as the trial court observed, the parties failed to present, either jointly or separately, any workable proposed parenting time plan or schedule. Although Kimberly proposed at trial

that she could drive E.S. back to Illinois so George can have visitations, it was unclear whether she would drive once a month, every other month, or that she and George would alternate months. There are significant issues with her proposal because Kimberly testified that E.S. does not like car rides and has a meltdown if he is in the car for longer than 15 minutes, that the drive between Tennessee and Illinois was eight or nine hours, and that Kimberly would have to make the drive with either her father or A.R., work around their schedules, and stay overnight in a hotel to break up the drive. As the trial court accurately observed, disrupting E.S.'s routine this way on a monthly basis would not be beneficial for E.S., and the long drive would not be in his best interests. Considering this record, the trial court's determination on factor nine was not against the manifest weight of the evidence. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 103 10. Minimization of the Impairment to a Parent-Child Relationship

¶ 104 Kimberly next contends on appeal that the trial court's determination that factor 10, minimization of the impairment of the parent-child relationship between George and E.S., weighed in favor of George was against the manifest weight of the evidence.

¶ 105 In considering this factor, the trial court found that it was unlikely that Kimberly would try to minimize any impairment that would inevitably continue to occur to George and E.S.'s relationship if relocation were allowed. The trial evidence demonstrated the history of the parties' difficult parenting relationship, and Kimberly's actions showed her lack of willingness to minimize any impairment to E.S.'s relationship with George. As previously noted, Kimberly failed to schedule the appointment between the therapist and E.S. so that E.S. could finally be reintroduced to George. Further, before the parties separated, Kimberly regularly refused to leave George alone with E.S. after work or when she would spend hours running errands on the weekends. After their separation, Kimberly imposed additional restrictions and time limitations on E.S.'s visits with George that were not required by the court orders or supervising therapist. George's extended family testified about Kimberly's reluctance or refusal to bring E.S. to family gatherings or playdates and their desire to have E.S. remain in Illinois and be part of family gatherings and around his cousins of similar age. As the trial court aptly observed, Kimberly made "repetitive excuses as to why she cannot bring E.S. around George's family" and evinced "a pattern of avoiding bringing E.S. into George and his family['s] life." Although Kimberly is understandably protective of E.S., her actions in regard to George's supervised visitation, reintroduction, and parenting time showed her lack of willingness to minimize any impairment to E.S.'s relationship with George.

¶ 106 Kimberly asserts that the trial court failed to consider the evidence that George did not reschedule the missed November 7, 2018, appointment, that George agreed to the restrictions on his parenting time imposed by court order, and that he filed petitions to modify which were never brought to a hearing. Kimberly argues that George can continue to learn about autism even if E.S. relocates to Tennessee and his parenting time could be increased through Zoom or Facetime. She argues her testimony that she would drive to Illinois for visitations was unrebutted, that George's family showed no interest in having a relationship with E.S., and that any testimony to the contrary was mere "trial strategy."

¶ 107 However, the record does not support that the trial court failed to consider any and all evidence presented to it. Rather, it provided a thorough review of the hearing evidence and its findings of fact. In short, the evidence did not support that Kimberly would cooperate to minimize the impairment to George's relationship with E.S. if relocation were allowed.

Although Kimberly wishes for this court to weigh the evidence differently, there is no basis for us to conclude that any of the trial court's factual findings were indisputably erroneous or that an opposite conclusion was clearly called for. *P.D.*, 2017 IL App (2d) 170355, ¶ 18. The trial court, as the trier of fact, was in a superior position to observe the parties and the witnesses—including George's extended family witnesses—and assess and evaluate their credibility. *Fatkin*, 2019 IL 123602, ¶ 32. We find no manifest error in the trial court's conclusion that this factor weighed in favor of George and against relocation.

¶ 108 11. Any Other Relevant Factors Bearing on the Child's Best Interests

¶ 109 As additional relevant factors, the trial court considered that George's motivation to object to relocation was a genuine desire to foster a relationship with his son, which favored George. Further, the fact that Kimberly and her father had made no concrete plans or had taken any concrete steps toward moving to Tennessee or for Kimberly to find employment there weighed in favor of George.

¶ 110 On appeal, Kimberly contends that George made little effort to reestablish his relationship with his son and any efforts were merely a trial strategy to block relocation. However, we previously found no manifest error in the trial court's assessment of the evidence in that regard. There was also no manifest error in the trial court's finding that Kimberly had not taken any further steps to move other than looking at a few houses online. Although she testified that she may open a Mathnasium there and that she potentially had a job with the school she had identified for E.S., she did not present any further or more specific evidence to that end. As such, we find the trial court's determination as to this factor was not manifestly erroneous.

¶ 111 In sum, the trial court here was faced with a contested relocation petition and conducted a two-day hearing at which both parties had the opportunity to testify and present witnesses and other evidence. After the hearing, the trial court entered a 22-page written order detailing its factual findings based on an extensive review of the evidence and its application of those findings to each of the statutory factors. In ruling, the trial court recognized the difficult history of the case and the difficulties of raising a child with autism. It noted that it must decide what is in the best interests of E.S., not what was in the best interests of A.R. or Kimberly. It found that Kimberly had not met her burden of showing that relocation would benefit E.S., as it would cause significant disruption to his schedule, which is important for a child with autism. Further, traveling by car once or twice a month between Tennessee and Illinois was not in his best interests due to the long drive and the fact that he cannot tolerate car rides longer than 15 minutes. It also found that Kimberly had not met her burden of showing that relocation was in the best interests of E.S. in relation to his educational opportunities, as she failed to demonstrate that he could not receive the same opportunities or services in Illinois. In addition, the court found that the parties would not be able to fashion a reasonable allocation of parental responsibilities in the event of relocation, as Kimberly's pattern of behavior showed that she would not try to minimize the impact relocation would have on George's relationship with E.S. Based on this record, we find that the trial court's best-interests determination was not clearly against the manifest weight of the evidence. *Id.*

¶ 112 III. CONCLUSION

¶ 113 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 114 Affirmed.