

2012 IL App (2d) 110763-U
Nos. 2-11-0763 & 2-11-0966 cons.
Order filed March 13, 2012
Modified upon denial of rehearing April 16, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> Q.B., a Minor,)	Appeal from the Circuit Court
)	of Winnebago County.
Respondent-Appellant)	
)	No. 08-JA-41
)	
(The People of the State of Illinois)	
and Concepcion J. D. and Kenneth D.,)	
Petitioners-Appellees, v. The Department)	Honorable
of Children and Family Services,)	Mary Linn Green,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

Held: The trial court did not exceed its powers in ordering the Department to assign a caseworker who was able to carry out its duties to the minor and prohibiting a change of placement until a permanency review and best interests hearing could be done; and the trial court's ultimate order allowing adoption of minor by foster parents was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court was affirmed.

¶ 1 These appeals involve the adoption of Q.B., a minor born on May 30, 2007, in Winnebago County, of parents Elizabeth S. and Marvin David M. On June 30, 2011, the trial court determined that it was in the best interests of Q.B. that her foster parents, petitioners, Concepcion ("Connie")

and Kenneth D., be granted private guardianship instead of her paternal grandparents, Pearl M. and Marvin M.¹ In appeal number 2-11-0763, the guardian ad litem (GAL) for respondent Q.B. appealed the trial court order, arguing that the trial court erred in terminating the guardianship of respondent, the Department of Children and Family Services, and that placement with the foster parents was against the manifest weight of the evidence. In appeal number 2-11-0966, the Department argues that the trial court unlawfully interfered with its discretionary functions by ordering a local caseworker to work on the case, which it argues skewed later proceedings and nullifies its ultimate best-interests finding. It alternately argues that despite any unlawful interference, the trial court's best-interests decisions are unsupported by the record evidence. We affirm.

¶ 2

I. BACKGROUND

¶ 3 This case began with the State's neglect petition filed on February 29, 2008. The petition alleged that Q.B. was a neglected minor because her environment was injurious in that Elizabeth's substance abuse problem prevented her from properly parenting her (count I) and because Elizabeth's mental health issues prevented her from properly parenting her (count II). On that date, the State informed the court that Elizabeth had a case in Cook County pertaining to other children, that she named Marvin David M. as Q.B.'s father, and that the couple had another child involved in the Cook County case. The State requested paternity testing to confirm fatherhood. The Department was assigned guardianship that same day, and paternity testing was ordered to establish that Marvin David was Q.B.'s father. On March 12, 2008, the Department reported to the court that it found an address for Marvin. A caseworker with a Department subcontracting agency in Chicago, Vanessa White, was identified as the caseworker on the case, but she was not present at the hearing.

¹ Pearl and Marvin are not parties to these appeals and did not file any briefs; their position, however, is represented by the Department and the GAL.

The State requested a caseworker in the Rockford area given that Elizabeth and the child never resided in Chicago but acknowledged that Elizabeth had kids in Chicago involved in the system. The following colloquy occurred between the Honorable Patrick L. Heaslip and the parties, in relevant part:

“THE COURT: Does she have open cases in Chicago?”

[The State]: I’m afraid nothing is getting done here because the caseworker is in Chicago.

THE COURT: Well, you know, if they don’t do their job properly, the appropriate findings will be made. I don’t think it’s my place to order a specific caseworker to be assigned, if I could do that. But if they don’t provide services then—they have been found to do that—it certainly wouldn’t be good.

I need a formal diligent search now for [Marvin David] I will order the caseworker who is assigned to the case * * * Vanessa White, order that she perform that, complete that formal diligent search, order that she present that to the Court on March 24.”

¶ 4 Later, White appeared and discussion was had off the record. The State then requested some orders be entered, including having Elizabeth sign a release of information to contracting agencies with the Department so that a “courtesy worker” could be sent out once a month. The court asked why it had to interfere with the Department. The State responded that the matter was in Cook County because Elizabeth had seven other children in care, so all services she was getting was through a courtesy from the Department because they were not getting paid. The court interrupted and stated that it was not a “courtesy” because the Department had an obligation regardless of whether the case was handled in Chicago or Rockford. The court stated that it would not tell the

Department what caseworker to send out to do the monthly or weekly visits because it was within the discretion of the Department. White informed the court that the deputy director of the Department assigned the case to a “courtesy worker.” The court stated that it should not be involved, stating:

“You are basically asking me to act like I’m an investigator somehow in charge of the Department. I am not. I could order the Department to be assigned cases, assign the caseworker, prepare a service plan, to provide services. It isn’t my position to set forth the specific services. I shouldn’t be doing that.

If you don’t provide the appropriate services, then I should make findings that you are not making reasonable efforts to complete the goals that are set forth by the Court. But, you know, it is wrong of me to be involved in these sort of, I don’t know what you want to call it, you know, disagreements in your own Department. It seems silly to me.”

¶ 5 White told the court that the local agency was a subcontractor to the Department, and she was the caseworker for the family. The court stated that it would order the Department to assign a local caseworker for Elizabeth but stated:

“You know, I go round and round with the Department on this. I know what they do, especially when they contract things out. What I always like to do with them, I have monthly meetings out here with all agency heads, and we talk about what the issues are. This is always an issue, and what I encourage them to do is negotiate these points in their contracts. I shouldn’t be involved in the contractual relationship between a contracting agency and the Department. Somehow we get kind of dragged into that all of the time. Then when I do

these things, the Department comes out and says, ‘You can’t do that, shouldn’t be doing it.’

Okay. Well, we will do it, see what happens.”

¶ 6 A written order was entered ordering White to do a diligent search to notify the father and the Department was ordered to assign a local caseworker, without objection by the Department or the parties. The State also moved to have Q.B. placed back with Elizabeth.

¶ 7 On March 24, 2008, the parties appeared and White informed the court that she located the father but did not provide proper notice because she did not understand what was necessary to satisfy the legal requirements. The court ordered a summons be sent to the father at the address provided. White then informed the court that on March 12, she was given permission to place Q.B. with Elizabeth and did so on that date. White stated that within the hour, the Department took her back. White stated she was no longer the caseworker for Q.B., that Q.B. was with a foster home in Rockford, and that she did not know whether a caseworker had been assigned. She stated the Department was still holding the case. The matter was continued until April 18 for proper notice to be filed for the father.

¶ 8 On April 18, Elizabeth and Marvin David appeared with the attorneys. No caseworker appeared on the matter. Counsel for Elizabeth informed the court that no caseworker contacted or visited Elizabeth for a month for any visits with Q.B. The court ordered a rule to show cause for the Department’s failure to have a caseworker appear. On July 17, 2008, the court determined Q.B. was an abused/neglected minor. At that hearing, Kristin Tryggestad appeared as Q.B.’s caseworker. Upon stipulation of the parties, the court adjudicated Q.B. a neglected minor, placed custody and guardianship of her to the Department, with the Department having discretion to place the child with

a responsible relative or foster home and having discretion to allow visits with Elizabeth. The matter was set for a permanency hearing on January 12, 2009.

¶ 9 On September 15, 2008, the parties appeared, with Lorinda Bachelor of Children's Home and Aid agency (CHASI), appearing as Q.B.'s caseworker. Counsel for Elizabeth told the court she did not know what was going on but thought that the parents were trying to sign over their rights and have the paternal grandparents adopt. Bachelor stated that the possibility that the paternal grandparents would take Q.B. was discussed when White was working on the case. White performed a home study and determined that their home was appropriate. Bachelor stated that the Department had to place Q.B. in the home before Elizabeth and David Marvin could sign the papers to surrender parental rights. The court asked if the case had been legally screened, and Bachelor stated yes but only in Chicago. Bachelor informed the court the case was split and that a Chicago case involved eight of Elizabeth's children. The court advised the parties that the Department needed to get the case legally screened and change the goal to adoption. The matter was continued for the Department to perform these tasks.

¶ 10 On January 12, 2009, the matter was up for permanency review with the attorneys and Tryggestad appearing. Tryggestad reported that Q.B. was 18 months' old and had been with Ken and Connie for almost one year. Q.B. was doing well with the family, and the family wanted to adopt her. They signed permanency commitment forms. Tryggestad stated that Elizabeth had some visits with Q.B. but was noncompliant with the other requirements including drug testing and parenting classes. Tryggestad recommended that the goal be changed to substitute care and stated she had not had the case legally screened. The court determined that the permanency goal would remain to return home within 12 months since it was the first permanency hearing.

¶ 11 A second permanency hearing was held on July 6, 2009, with Tryggestad appearing as the caseworker. Tryggestad testified that Q.B. was two years old and in the care of Connie and Ken and doing well. She testified that Elizabeth was no longer cooperating or visiting with Q.B. Tryggestad believed that Marvin David was possibly seeing Q.B. at the home of the paternal grandparents because Q.B. was having visits in Chicago with them and other siblings. She testified that she had not authorized Marvin David to see Q.B., but he had been seen at the residence. She recommended substitute care for Q.B. She had the case legally screened, and it had passed. When asked about her concerns about the father having access to Q.B. during the paternal grandparent home visits, Tryggestad testified that he had not maintained contact with her, had a criminal record, and had a history of substance abuse. She knew that Marvin David and Elizabeth had another child and that child was in the care of the paternal grandparents. Because he was not cooperating or appearing in court, Tryggestad had no way of knowing what his criminal or drug status was and therefore, she could not approve visitation with him. She acknowledged the case was shared with Chicago because Elizabeth's other children were in Chicago. The parties agreed to change the goal to substitute care, and the court also agreed and entered the order. An order was also entered ordering Marvin David to have no contact with Q.B. until he presented himself in court.

¶ 12 On August 28, 2009, the court heard the State's motion to terminate the parental rights of Elizabeth and Marvin David. At the beginning of the proceeding, Pearl and Marvin, Q.B.'s paternal grandparents, identified themselves and Q.B.'s sibling, Marvin Jr. Marvin informed the court that they were trying to get their license to adopt Q.B. Tryggestad stated that the adoption was moving towards permanency with the foster parents. The court informed the grandparents they could not remain in the courtroom because they were nonparties at that point in time. Marvin told the court

that Q.B. was visiting once a month, but the court stopped the visitation. They wanted to adopt her before someone else, and the foster parents did not want them to see Q.B. Pearl and Marvin then left. The court advised the parties to complete notice to the parents and continued the matter.

¶ 13 On December 2, 2009, the matter was up for termination of parental rights. Attorney Robert Clarke appeared on behalf of Pearl and Marvin and advised the court that he filed an appearance as an interested party and would possibly be filing petitions with respect to the ultimate placement of the child. The court excused Clarke because he was a nonparty. Tryggestad testified that she was not sure whether paternity testing was ever performed to confirm that Marvin David was Q.B.'s father. She knew he appeared in court one time but he never maintained contact, never completed any services, and never appeared in court again. He had not visited with Q.B. since October 2008. Tryggestad testified that the paternal grandparents had some visits with Q.B., and Marvin David had some unauthorized contact with Q.B. during those visits. She knew that the paternal grandparents had custody of Q.B.'s sibling and had expressed that they wanted to adopt Q.B. However, Tryggestad stated that Q.B. had already been with her foster parents for over a year by that time. Tryggestad testified that Q.B. had been with Ken and Connie since she was nine months' old, which was March 2008. Q.B. called Connie "mom" and was well bonded with both foster parents. Ken and Connie also had another child, J.J., whom Q.B. considered a brother and had a strong relationship. Tryggestad confirmed that Q.B. had a full sibling with Pearl and Marvin and other siblings. She testified that Pearl and Marvin did not immediately come forward and express an interest in Q.B. The court agreed that parental rights be terminated. The court determined it was in the best interests of Q.B. to keep the Department as Q.B.'s guardian, granting it the power to consent

to her adoption should anyone be legally appropriate to adopt her. The permanency goal was set for adoption.

¶ 14 On June 1, 2010, the matter was up for a permanency hearing. Laurel DenHartog testified that she was Q.B.'s caseworker. Q.B. just turned three years old. She stated the goal was still adoption by the foster parents, and the papers were in process. The matter was continued and recalled on September 3, 2010. DenHartog appeared and informed the court that an appeal to the Department was filed by Pearl, who stated that she wanted to adopt Q.B. The Department informed DenHartog that it wanted her to place Q.B. with the paternal grandparents and allow them to pursue the adoption instead of the foster parents. DenHartog stated that Ken and Connie were appealing that Department's decision. The court asked why the Department was now changing its mind, and DenHartog stated that the basis for the decision was the fact that the grandparents were blood relatives, and they had custody of Q.B.'s full sibling. DenHartog stated that the grandparents' desire to adopt "came out of left field for all of us" because prior to that they were fine with the visitation situation. DenHartog stated she was ordered to immediately place Q.B. with Pearl, even though Q.B. had never been placed there before. The State asked the court to delay the change in placement until the foster parents' appeal was resolved by the Department.

¶ 15 The court entered an order prohibiting Q.B. from being removed from the present foster placement home until the court could determine if removal was in her best interests. An attorney for the Department, Jessica Johnson, objected, stating that it was the Department's policy that once the clinical determination was made, it followed the determination unless it was overturned on appeal. The court stated it was setting the matter for a hearing, and advised Ken that this was likely going to become a contested adoption, and he should retain counsel.

¶ 16 On October 25, 2010, the parties were before the court on the foster parents' motion for leave to file their petition to intervene. During that hearing, the trial court expressed frustration with the incompetence of the Department in this matter. The court asked counsel for the Department, Cynthia Brisbon, why the Department wanted to remove the child from the foster home now. Brisbon stated that the bottom line was Q.B. had grandparents in Chicago with her full-blood sibling. The court asked where these relatives were three years ago. Brisbon advised that since Q.B. came into the Department's care, Pearl and Marvin had been "knocking at the door trying to get custody." The parties wanted the matter continued. The court stated that it wanted the parties to file their petitions for adoption and get the issue resolved because changing placement at this point was senseless. When the court asked why the child had not yet been adopted, counsel for the foster parents advised that she believed the Department had not approved the subsidy but that her clients were willing to adopt without the subsidy. In regard to the delayed proceedings in this matter, the court commented "Yeah. See. I think it all comes back to the Department." Counsel for the foster parents filed a petition for adoption ready and a motion to modify custody and guardianship. The best interest hearing was set for November 5 before Judge Mary Linn Green, who was taking over the family court call for Judge Heaslip.

¶ 17 On November 3, 2010, before Judge Green, Brisbon moved the court to vacate and reconsider Judge Heaslip's prior order that prevented the Department from moving Q.B. to Pearl and Marvin. Counsel for Ken and Connie (attorney Lori Peacock) appeared and informed the court that she had filed a petition to intervene and a motion to modify guardianship by removing the Department as guardian and naming Ken and Connie guardians. The court, believing that there was conflict within the Department, granted the grandparents' petition to intervene, finding it was in the

best interests of Q.B. to allow them to be heard so that the court could hear the full picture. The court cited to section 1-5 of the Juvenile Court Act of 1987 (705 ILCS 405/1-5 (West 2010)) in finding that the grandparents could intervene as a responsible relative. The State requested that the Department provide documentation of paternity because that was never provided and termination of parental rights was entered to all whom it may concern. The Department stated it would comply and that paternity was never at issue. The court denied the Department's motion to vacate Judge Heaslip's order concerning removing Q.B. from her foster home.

¶ 18 On November 5, 2010, the permanency review and best interests hearing commenced. The State informed the court that it was not aware that paternity results did not exist until that morning. It was court ordered back in February 2008, but never completed. The court re-ordered the testing be completed. The parties then argued the State's motion for a protective order barring Q.B.'s visitation with Pearl and Marvin because of Marvin David's unauthorized contact with the child in the home. Tryggestad, DenHartog, and Pearl testified on the motion. The gist of the testimony surrounded the allegations that Pearl had allowed her son to have contact with Q.B. The testimony showed that Pearl was never advised of the no contact order and that Marvin David was allowed to have supervised contact with Marvin Jr. In addition to the testimony, the court took judicial notice of Jamie Wagner's report. Wagner performed a play therapy assessment of Q.B. to determine how she was handling the increased visitation with Pearl and Marvin. The report suggested that the visits with Pearl and Marvin were nurturing and appropriate and that Q.B. was bonding with them as her grandparents and with Marvin Jr. The court stated that given the totality of the evidence presented, it was denying the State's motion for an order of protection. In doing so, the court reiterated to Pearl

and Marvin that Q.B. was to have no contact with Marvin David. However, the court did not believe they needed supervised visits at this time.

¶ 19 On November 17, 2010, the matter was before the court again. The court recapped the case status by stating the case was up for a permanency review and best interests hearing when the parties filed a flurry of motions. The court stated that four motions were outstanding: the State's motion *in limine*, the State's motion and the foster parents' motion for reconsideration of the court's decision to give the grandparents' intervenor status, and the foster parents' motion to modify guardianship. First, the Department stated that it wanted the court to order that the DNA sample given by Marvin David in Chicago to establish paternity in Marvin Jr.'s case be released to compare with Q.B.'s given that the Rockford branch of the Department never knew about the sample or failed to look into it. The court entered the order for the parties. The court also determined that it had erred in granting intervenor status to Pearl and Marvin pursuant to section 1-5(1) of the Juvenile Court Act (705 ILCS 405/1-5(1) (West 2010)) but recognized that section 1-5(2)(a) (705 ILCS 405/1-5(2)(a) (West 2010)) gave the grandparents the right to be heard by the Court and to present evidence about the minor's best interests at the best interests hearing. The grandparents would be able to present witnesses but would not be able to cross-examine witnesses pursuant to the statute.

¶ 20 After a flurry of more arguments regarding the motions and the grandparents' status, the court stated that it was going to bifurcate the permanency review from the best interests hearing. The court explained that the permanency review looked at the prior six months' time and the best interests hearing looked at everything. Because the parties were disputing when and what the grandparents could bring in for the best interests hearing, the court determined bifurcating resolved the problem.

¶ 21 On January 21, 2011, the court first conducted the permanency hearing. DenHartog testified that CHASI was proceeding with the foster parents' adoption of Q.B. as of June 2010. The Department held a "clinical staffing" of Q.B.'s case in July 2010, at which Ken and Connie were not invited. DenHartog testified that Q.B.'s paternal grandparents were at the meeting. The outcome of that meeting was that the Department wanted Q.B. placed with her grandparents and that DenHartog should immediately begin the transition for Q.B. by increasing her overnight visits with the grandparents. DenHartog testified that Judge Heaslip's September 3 order made her unable to complete Q.B.'s placement in the grandparents' home. However, DenHartog had increased Q.B.'s overnight visits with her grandparents to three nights per week and the other four nights were with her foster parents. DenHartog admitted that the court never stopped the adoption of Q.B. by Ken and Connie, but the Department did.

¶ 22 DenHartog observed Q.B. with her grandparents between July and October 2010. At first, she observed difficulties such as Q.B. clinging to her foster father and not wanting to be left with her grandparents. Q.B. reacted with less emotion each time. DenHartog testified that there was another "clinical staffing" meeting on October 27, 2010, which was attended by the foster parents and the grandparents. The issue was brought up that the grandparents needed more time with Q.B. to develop a bond despite the grandparents previously stating at the July clinical staffing that they had a strong bond with Q.B. and wanted to adopt her. DenHartog said the discrepancy was raised but not addressed other than the Department wanted to continue to work towards Q.B. being adopted by the grandparents. DenHartog ordered an assessment of Q.B., which was performed by Wagner. Wagner performed a play therapy assessment with Q.B. to see how she was handling things.

¶ 23 On cross-examination, DenHartog testified CHASI's position at the July staffing meeting was not to move Q.B. out of her foster home. DenHartog admitted that she followed the Department's order to begin the transition, and she began to increase visits with the grandparents. DenHartog did not visit Pearl's home until November and made three visits total between November 2010 and January 2011. Prior to the increased visits ordered after the July staffing meeting, Q.B. was visiting her sibling with Pearl and Marvin at the SOS Children's office one time per month. The visits became weekly in September 2010. DenHartog stated the visits that she observed between Q.B. and her grandparents were nurturing and positive. DenHartog admitted that it was usually preferential to place a child with relatives or with a sibling from the outset of a case if that was possible. She admitted that CHASI failed to document why Q.B. was not placed with her grandparents from the outset.

¶ 24 DenHartog admitted that her report to the court dated January 21, 2011, indicated that it would be extremely traumatic for Q.B. to leave her foster family now. DenHartog based that opinion on the length of time that Q.B. had been with them, the bond she formed with them, her age, and the way that children her age look at time and relationships. Q.B. referred to "home" as being with Ken and Connie.

¶ 25 No other witnesses were presented for the permanency review hearing. The court, having heard the evidence and testimony and arguments, found that the goal of adoption was in Q.B.'s best interests and that maintaining her current placement was also in her best interests. The court found two facts very disturbing. First, that despite Judge Heaslip's order not to remove Q.B. until a best interests hearing was held, the Department constructively moved Q.B. by increasing her time with Pearl and Marvin from one day-visit per month to 40% of the time, or three nights per week.

Second, that the Department failed to establish paternity until this hearing. Accordingly, the court found that the Department had not made reasonable efforts in this review period.

¶ 26 The court and the parties moved on to the best interests hearing. Wagner testified that she was a registered play therapist. Wagner met with Q.B. four times. First, she met her on October 6, 2010, for an initial assessment. She assessed Q.B. alone in a playroom on October 13, and then at Pearl's home on November 2. Wagner did a final play-based assessment on November 3 in her office. In her opinion, Wagner believed Q.B. had a primary bond and attachment with Ken and Connie. During the assessments, Q.B. referred to their house as her "home," and they were "mom and dad." Wagner testified that Q.B. at first did not refer to Pearl and Marvin by any name but at the second session called Pearl "grandma."

¶ 27 Wagner explained that she saw some anxiety in Q.B. because she observed Q.B. during the transition period where the Department was increasing visits with Pearl. Q.B., overall, seemed happy and never presented either family in a negative light. Wagner did not observe any traumatic responses in Q.B. She could not predict what the effect would be on Q.B. if she were to be removed from her foster family's home. She testified that she expected that there would be some trauma as there would be for anyone who loses a parent. Wagner recommended that if Q.B. were to be placed with Pearl that counseling be available for Q.B. to deal with the grief and loss of losing Ken and Connie. She did not recommend counseling if contact with Pearl were to end because Wagner had been informed by Q.B.'s caseworker that Ken and Connie would continue visitation with Pearl, Marvin, and Marvin Jr. Wagner testified that in her opinion the ideal situation for Q.B. would be to remain with her foster family and have her grandparents in her life. Wagner explained this recommendation would avoid Q.B. from having to suffer the pain of losing her parents. She

admitted that Q.B. would likely have a stronger bond with Pearl and Marvin had Q.B. been placed there at the outset of coming into the Department's care. Wagner also explained that losing a primary bond, such as the one Q.B. had with her foster parents, was more traumatic than losing a secondary bond, such as the one Q.B. had with her grandparents.

¶ 28 Margot Mahan, a clinical psychologist employed by the Department, testified as an expert in attachment and trauma. Mahan was asked by the Department to participate in a "clinical staffing" related to Q.B. Mahan testified that she was provided with information about Q.B., such as she was developmentally on target, healthy, happy, doing well in her foster home, and had some visitation with the grandparents. Mahan believed that it was in Q.B.'s best interests to be placed with her grandparents. She stated that while it would be difficult for her to experience that change in placement, she was a healthy child and had an ongoing relationship with her grandparents. Q.B., in Mahan's opinion, was a resilient, competent child who could handle the change in custody. In Mahan's opinion, the move was in Q.B.'s long term best interests because of the biological ties to the grandparents and siblings and the shared cultural and racial identities.

¶ 29 Mahan also expressed concerns over the foster family's care of Q.B., including: (1) that they refused to take her off soy milk when it seemed to be causing a rash; (2) that Q.B.'s hair was dry and breaking; (3) that Ken stated he would not tell Q.B. she was adopted; and (4) that Ken and Connie stated they did not want another African-American child because their hair was too difficult to maintain. Mahan found it incredible to not tell Q.B. she was adopted given the racial differences between Q.B., who was African-American, and Ken, who was Caucasian, and Connie, who was Asian. Mahan believed their preference for non-African-American children going forward demonstrated a bias against Q.B.'s race and would impact their ability to nurture Q.B.'s racial and

cultural identity. Mahan never met with Q.B. nor her foster parents. She did not attend the October 2010 clinical staffing meeting. Mahan admitted that there were conflicting statements regarding Q.B.'s bond with Pearl, namely that Pearl had said Q.B. did not know her yet after having said they already had an established bond. Mahan did nothing to find out more about what Q.B.'s relationship with Pearl was and instead believed the Department's information that ongoing visits had been occurring. Mahan believed CHASI was mischaracterizing facts. She did not believe any assessments were necessary.

¶ 30 DenHartog testified consistently with her earlier testimony. In addition, she testified that Connie's parents stayed with the family when they visited from the Philippines. They had no childcare responsibilities and were never left alone with the children. DenHartog did not recall whether having Connie's parents in the home presented a licensing issue but probably advised them to check into that to avoid any problems. No problems ever resulted. DenHartog described Q.B. as a "daddy's girl," and stated she had a warm, loving relationship with Ken. Q.B.'s relationship with Connie was also warm and loving. Connie was a nurturing mother, and Q.B. was comfortable with Connie. DenHartog knew Q.B. to always be well-cared for, clean, and healthy. Ken and Connie were also in the process of adopting J.J., and Q.B. had a close, sibling relationship with him.

¶ 31 After Judge Heaslip's September order, DenHartog tried to maintain a balance between the two homes until the final decision would be made. DenHartog testified that they increased visits to three nights a week with Pearl and Marvin and four nights per week with Ken and Connie. DenHartog testified that between September 2010 and January 2011, Q.B. visited with Pearl and Marvin weekly, and that Q.B.'s initial emotional and distraught reactions to the visits had improved and that Q.B. reacted to the visits with increasing calmness. She observed that Pearl and Marvin

cared for Q.B.; they were affectionate with her and Q.B. returned the affection. Q.B. also recognized Marvin Jr. as her brother, and they would play together. In her opinion, DenHartog believed that it was in Q.B.'s best interest to be adopted by Ken and Connie. She based her opinion on all of her observations of Q.B. and her history. Ken and Connie took Q.B. to the Chicago SOS Village office for visits with her siblings and were committed to continuing those visits. DenHartog testified that while Q.B. no longer resists the visits with Pearl and Marvin, she continued to express relief at going home to Ken and Connie.

¶ 32 DenHartog testified that while Ken and Connie have expressed that they would continue to bring Q.B. to see her grandparents and siblings, Pearl and Marvin have stated that the drive to Rockford was burdensome and that they felt the Department should provide transportation or reimburse them for mileage.

¶ 33 Kathie Larson, a CHASI foster home licensing representative, testified that when she visited Ken and Connie's home in 2010, she learned that Connie's parents had been there visiting for a month. Kenneth stated they were staying a few more weeks. Larson informed them that they could not do background checks on them so they should not be left alone with the children and should not stay much longer. Larson did not give them a specific time that Connie's parents had to leave. Larson never followed up. Later, she learned in September 2010 from DenHartog that Connie's parents were still in the home. Larson then told Connie her parents needed to leave, and she complied.

¶ 34 Larson testified that she spoke to Connie on June 1, 2009, during a monitoring visit. During that conversation, Connie stated that they were open to accepting more placements but having another African-American child would be too much for her to handle. Larson documented their file

to reflect that they preferred Hispanic or Caucasian children in the future because caring for Q.B.'s hair was difficult for Connie. Larson admitted that Ken and Connie have never refused an African-American child and have fostered several African-American and biracial children in the past. Larson admitted that caring for African-American hair is not intuitive and foster parents often must be instructed. Larson had a note in Connie's file that a caseworker had talked to Connie about how to care for African-American hair. Larson testified that Ken and Connie expressed excitement over having Q.B. in their home, and when she and J.J. were freed for adoption, they wanted both of them. She also acknowledged that Ken and Connie follow a vegan diet but that she never had any concerns over Q.B.'s health. Larson also testified that Ken and Connie have always stated that they were willing to work with biological parents to maintain contact if they were allowed to adopt and willing to accept and nurture the culture and heritage of a child of a different race or background.

¶ 35 Tryggestad testified that she first knew Q.B. was with Ken and Connie because she was managing the case of their other foster child. They had advised Tryggestad that no one had been out to see Q.B. since they took her in. Two months later, Tryggestad was assigned Q.B.'s case. During those two months that Q.B. was with Ken and Connie, White never visited and White did not change her placement to Pearl. At a July 17, 2008 conference with the trial court, Tryggestad noted that White had informed the judge that Pearl only wanted Marvin Jr. In communicating with White, Tryggestad questioned her regarding the safety of Pearl's home because Elizabeth heard about another relative having a gun incident in the home. White responded that the gun story was not true and that she was waiting for licensing of Pearl's home before placing another sibling in the home. Later, Tryggestad spoke with Pearl and Marvin in January 2010, at which time they requested

visitation but not placement. She knew that Ken had been taking Q.B. for sibling visits in 2009 but that Pearl and Marvin were not present during those visits. Ken felt the sibling visits were important.

¶ 36 Tryggestad testified that she spoke with Connie about Q.B.'s iron levels, which were low. Tryggestad advised Connie that Elizabeth stated low iron ran in the family and to try vitamin supplements. That rectified the problem. She also received a complaint from Elizabeth about the care of Q.B.'s hair. Tryggestad took hair products over and discussed the necessary care for Q.B.'s hair with Connie. Connie also found someone at her church to assist her with caring for Q.B.'s hair. Regarding a skin rash and soy milk, Tryggestad stated there were concerns that the skin rash was caused by the soy milk. The rash cleared up and Connie still gave Q.B. soy milk. The rash was never an issue after a short period in 2008. Tryggestad did not know what caused the rash.

¶ 37 Tryggestad admitted that she did not follow up to see if Q.B. could be placed with any of her siblings. She admitted that "it was an ongoing discussion" between her and her supervisor, Amy Kukuczka, as to whether Q.B.'s case should be transferred to the Chicago agency. Tryggestad first learned of Q.B.'s grandparents' interest in obtaining custody of Q.B. in October 2008.

¶ 38 At a March 2009 "legal screening" of the case, Tryggestad admitted that she presented both the foster home and the grandparents' home as possible permanent placements for Q.B. She submitted permanency commitment papers from both families and had written that she would like to place with either home, that she was looking at relatives in Chicago and awaiting transfer of case if possible, "otherwise current placement." Tryggestad stated her overall concern with the grandparents' home was the fact the biological father seemed to be living in the home. However, Tryggestad admitted that she never went to Pearl's home to discuss her concerns that Marvin David not have contact with Q.B. She sent them a letter terminating visitation instead.

¶ 39 White testified Pearl and Marvin first expressed an interest in taking Q.B. in March 2008. In June 2008, she spoke with Tryggestad, who advised White that she was going to expedite parental rights termination. White stated that she would follow up with Tryggestad regarding the grandparents' interest in Q.B. In July 2008, White was required to appear in court and was present in a conference at which Tryggestad admitted the paternal grandparents were a possible placement. White denied that she informed the judge that the grandparents only wanted Marvin Jr. After that conference, White informed Pearl and Marvin that the court was interested in considering them and advised Tryggestad that she wanted to coincide the sibling visits with preplacement visits with the grandparents. White stated that Tryggestad had the duty to go visit the grandparents' home and prepare for the visits and transfer to the home. White stated that Tryggestad never performed such duties. Tryggestad also had emailed that if Q.B. were to be placed with Pearl and Marvin, she wanted the case transferred back to White. White agreed to take the case but Tryggestad never transferred the case because the goal was still to return Q.B. to her mother. Tryggestad did not want to move Q.B. in the interim because she did not want to travel to Chicago.

¶ 40 White testified that Pearl and Marvin hosted sibling visits with several of Elizabeth's children including: 17-year old Terik, 15-year old Omri, 13-year old Devin, 11-year old Sam, 9-year old Aaliyah, 7-year old Troy, 5-year old Marvin Jr, and 3-year old Q.B. Aaliyah and Troy, full siblings, were in the care of a non-relative, pre-adoptive family. Terik was in a different traditional foster care family. Omri, Devin and Sam were successfully returned to their biological father. Marvin Jr., Q.B.'s full sibling, was placed with Pearl and Marvin and the goal was adoption. White testified there were other siblings of Q.B. that were not in the Department's care, including 14-year old Jurel, who resided with his biological father in Indiana, and two children born after Q.B. The first child

born after Q.B. was given up immediately upon birth for a private adoption. White testified that she was notified that Elizabeth gave birth to a second child after Q.B. in 2010 in Georgia and that child was in child protective services there. White knew that Pearl and Marvin maintained a relationship with the biological father of Omri, Devin, and Sam, and therefore Q.B. would continue to have a relationship with them.

¶ 41 Ken testified that Q.B. came into his care in March 2008, and she has thrived in their care. Q.B. had a normal sibling relationship with J.J., who was about the same age as Q.B. She also developed relationships with extended family members on both sides of their family, including their parents, siblings, and cousins. They have gone on family trips together, and they were active in their church. Ken testified that he and Connie were committed to nurturing both J.J.'s and Q.B.'s racial and cultural backgrounds.² They were also committed to maintaining a relationship with Q.B.'s siblings. After the agency terminated the grandparents' visitation at their home, Ken continued to allow Q.B. to visit with them at the SOS Children's Village because he believed the visits were good in the long run. He testified that he developed relationships with the other foster families involved with Q.B.'s siblings.

¶ 42 Ken admitted he stopped transporting Q.B. to visits with Pearl and Marvin because he was angry with the Department's unexpected change in having them adopt Q.B. instead of him and Connie. If they were allowed to adopt Q.B., he testified that he would resume transporting Q.B. to sibling and grandparent visits. Ken also denied that he ever said he would never tell Q.B. that she was adopted. He testified that he stated he would tell her when she was old enough to understand what it meant.

² J.J. was biracial (African-American and Caucasian).

¶ 43 Ken described Q.B.'s reaction to initial overnight visits with Pearl and Marvin as emotional. Q.B. did not want to be left. She tried to keep her car seat's belt locked and did not want to get out of the car. During that transition period, Q.B. began to have trouble at night, stating she was scared and wanted someone to always stay with her. She has adjusted to the visits over time because so far she has known that she will come back to their home. Q.B. also started talking about her biological father, asking if she could call him. She also has asked to see Marvin Jr. and sometimes mentions her grandma.

¶ 44 Regarding the hair concerns, Ken testified that Connie got help from the caseworker and a friend from church in learning to care for Q.B.'s hair. It was not an issue anymore. After a family meeting with White, who expressed concern about Q.B.'s scalp, Ken took her to her pediatrician. The doctor stated that her braids were likely too tight and caused some breakage. They no longer keep her hair in braids but opt for loose twists. Regarding the rash in 2008, it was not due to soy milk, but rather was a ringworm infection, which was treated and cured. Regarding Connie's parents staying at their home, Ken denied that they "hid" this from the Department. Larson never advised him of any time limitations or potential problems with having them in their home.

¶ 45 Ken believed that Mahan's testimony was suspicious because she based her opinions on alleged statements that were made that he had clarified. He believed that moving Q.B. at this point would negatively impact her because she considered their home her home and he and Connie as her parents. He did not believe that she would suffer any negative impact if she stayed with them because he would continue to foster her relationship with Pearl and Marvin and her siblings.

¶ 46 Carlos Pena, a pastor at Kenneth's church, testified that he has observed Ken, Connie, Q.B., and J.J. and believed they interacted as a family, with Q.B. recognizing Ken and Connie as her mom and dad. The family regularly attended his services and participated in functions as a family.

¶ 47 Pearl testified that Marvin Jr. came to live with her and her husband Marvin on October 18, 2008. Prior to that, Pearl had been in contact with Elizabeth, who believed she would regain custody of Q.B. When Pearl learned that Q.B. was with a foster family, she contacted White about having Q.B. placed with them. She admitted she was aware that Q.B.'s case was handled in Rockford but she only spoke to White, who was handling Marvin Jr.'s case. Q.B. began weekend visitation with them in January 2009. She did not recall any visits with Q.B. prior to January 2009. The visits occurred for five or six months at the SOS Village's center for approximately one hour. Marvin Jr. was present for the visits. She admitted that she was not able to really bond with Q.B. during these visits because they were so short. Pearl stated she was able to bond with Q.B. when the weekend visits at her home started, but she was unable to recall when those started. The weekend visits occurred sometime in 2009. Pearl believed that Q.B. spent a total of four weekends at her home.

¶ 48 Pearl testified that Q.B. called her "grandma" and Marvin "grandpa" and that she knew Marvin Jr. as her brother. On their visits, they have gone to restaurants as a family and played in the park. Pearl has read books, played with puzzles, colored, and cut and pasted things with Q.B. and Marvin Jr. She described Q.B.'s relationship with Marvin Jr. as very close. Q.B. has a good relationship with Marvin as well. He often cared for Q.B.'s hair and makes her breakfast. Pearl admitted that when she speaks about how much time Q.B. has spent with Marvin Jr. and her, she is referring to the visitation beginning September 2010. Pearl testified that she wants to adopt Q.B. and wants her to be able to grow up with Marvin Jr. If allowed to adopt Q.B., Pearl testified that she

would allow Q.B. to have a relationship with Ken and Connie. She had no animosity towards them. Pearl testified that she had a good relationship with the other siblings of Q.B. and Marvin Jr. She had an open-door policy with them, allowing them to visit frequently. The siblings, even though they are not her biological grandchildren, call her “grandma.”

¶ 49 Regarding the safety concerns, Pearl denied the report by Elizabeth that someone with a gun was in the home. She also denied the most recent report by Ken and Connie regarding someone touching Q.B. inappropriately during a visit. The Department investigated the report and found it baseless. Pearl also testified that Marvin David had not been living in her home since prior to 2009. She testified that he was allowed supervised visits with Marvin Jr. and that she was never told that Q.B. was not allowed to have any contact with him.

¶ 50 Laura Stocco, clinical services coordinator for the Department, testified that she was assigned Q.B.’s case after Pearl and Marvin filed a complaint that Q.B. was not placed with them. Stocco coordinated the “clinical staffing” meeting and explained that Ken and Connie were not invited because Pearl’s complaint was directed at CHASI. Stocco explained that Q.B. came into the Department’s care after a hotline report came in that Elizabeth was not caring for her. The Department caseworker in Rockford initially placed Q.B. in another foster home before Ken and Connie eventually got her. Stocco testified that White never had authority to place Q.B. Eventually, the Department assigned Q.B.’s case to CHASI. At that point, Q.B. was already in the care of Ken and Connie, placed there by the Department. Sometime in July 2008, Pearl and Marvin learned that Q.B. was in foster care. CHASI was still trying to work with Elizabeth and so they did not move Q.B. to her grandparents.

¶ 51 Stocco testified that she agreed with the recommendation that resulted from the “clinical staffing” that it was in Q.B.’s best interests to be adopted by her paternal grandparents who have already adopted her full biological brother, Marvin Jr. In her opinion, Q.B. should have been placed with them earlier and believed that CHASI’s reasons for not placing her with them were faulty. Stocco expressed concerns about the fact that Ken and Connie had requested no future African-American children be placed with them because they found their hair too difficult to care for.

¶ 52 Robert Atchison, supervisor of permanency and licensing at CHASI, testified that initially he turned Q.B.’s case down because it was a split case, and he was not comfortable with that situation. The Department was desperate for a placement so he released Ken’s home to the Department for purposes of placement in March 2008. He admitted that he was unhappy with DenHartog not getting adoptions completed as timely as he would have liked. In reviewing the case and observing Q.B., Atchison believed she should be adopted by Ken and Connie.

¶ 53 Angela Davis, a caseworker with CHASI, testified that she was assigned Q.B.’s case after DenHartog was removed from the case. Davis did not believe Q.B.’s hair was improperly cared for but when White expressed concern, Davis asked the foster parents to take her to a dermatologist. The doctor informed them and Davis that her braids were too tight and to ensure her hair was being cleaned and oiled to prevent breakage. Davis advised Pearl that if she was going to have Q.B.’s hair braided to make sure the braids were looser. Davis did not have concerns about Q.B.’s care with Pearl and Marvin or with Ken and Connie.

¶ 54 Terik, Q.B.’s older brother, testified that he wanted to maintain a close relationship with Q.B. as he has been able to do with Marvin Jr. and other siblings. He believed if Q.B. were to live with

Pearl and Marvin, he would be able to have a close relationship with her. He acknowledged that Q.B. had a loving relationship with both her grandparents and her foster parents.

¶ 55 On June 30, 2011, the trial court made the following findings on the record in deciding that Q.B. could be adopted by Ken and Connie. The cause was before the court for a decision on the best interest determination as to placement for Q.B. The court had heard the testimony from multiple witnesses, reviewed the evidence and exhibits, and considered the arguments of counsel. The court also considered the statutory factors for best interest determinations. The court stated it particularly relied upon the following factors: the development of the child's identity; the child's background and ties including familial, cultural and religious; the child's sense of attachments; the child's community ties including church, school and friends; and permanency for the child. The court considered the factors in the context of Q.B.'s age of four and her present developmental needs. The court noted that Ken and Connie have been Q.B.'s foster parents since she was approximately ten months' old. She had been raised by Ken and Connie with her foster brother, J.J., whom they recently adopted. The trial court found that the evidence showed that both the foster parents and grandparents loved Q.B. and wanted to adopt her and that both homes could more than adequately provide for her safety, welfare, and everyday needs. Q.B. also had a large group of siblings in foster care in the Chicago area, and both families showed a commitment to maintain her relationship and visitation with them. Q.B.'s grandparents were committed to raising her with a strong sense of her African-American culture. Her foster parents were also committed to raising her in a multi-cultural environment. Both families were active in their churches and involved Q.B. in church activities.

¶ 56 The trial court determined that the evidence showed that Q.B.'s greatest sense of security was with her foster parents, who were the only parents she had ever known. Her words and actions

demonstrated that she considered Connie and Ken as “mom” and “dad,” and J.J., her brother. She lived in the same home with them since she was ten months old. Q.B. has established ties with the extended families of Ken and Connie. Since Q.B.’s visitation with her grandparents was re-established in September 2010, she formed a strong relationship and bond with Marvin Jr. The evidence showed that Q.B. considered Pearl and Marvin to be her grandparents and Marvin Jr. as her brother.

¶ 57 The process of re-establishing the visitation was traumatic for Q.B. initially, but she adjusted well as long as she was reassured that she would return to Ken and Connie. The court noted that Dr. Mahan gave extensive testimony but never personally met or assessed Q.B. Dr. Mahan viewed the trauma that would result from removing Q.B. from her foster parents’ care as short-term. The short-term trauma, in Dr. Mahan’s opinion, did not outweigh the benefit of Q.B. living with biological relatives. Alternatively, Wagner met with Q.B. and assessed her and determined that the loss that she would suffer from losing her foster parents would be a much greater loss than the loss of her grandparents. The court determined that the evidence showed Q.B. was a healthy, happy, well-adjusted, and resilient little girl. The court acknowledged that it was presented with a dilemma of weighing her sense of love and security with Ken and Connie against her long-term cultural and ethnic identity with her biological family.

¶ 58 The court stated it would be ideal to maintain Q.B. in the security of her primary family, Ken and Connie, and allow Q.B. to continue her visitation with her biological family. However, the court noted that was not something the court could order. It concluded, having considered the relevant factors and all of the evidence, that it was in Q.B.’s best interests to be placed with Ken and Connie. The court granted the foster parents’ motion to modify guardianship and custody.

¶ 59 On August 24, 2011, the trial court denied the Department's motion to reconsider its decision and granted the motion to stay the adoption pending this appeal.

¶ 60

II. ANALYSIS

¶ 61 We first consider the Department's argument that the trial court unlawfully interfered with its discretionary functions by ordering a local caseworker to work on the case and prohibiting it from moving Q.B. to her grandparents' home. After we address that issue, we will consider both the Department's and the GAL's arguments that the trial court's best-interests decision was against the manifest weight of the evidence and should be reversed.

¶ 62 The Department first argues that because the trial court exceeded its powers in ordering it to assign a local caseworker (March 12, 2008 order) and then later forbidding it from moving Q.B. to her grandparents home (September 3, 2010 order), we review the error *de novo*, citing *Macknin v. Macknin*, 404 Ill. App. 3d 520, 530 (2010). *Macknin* pointed out, however, that whether we label our review *de novo* or abuse of discretion, the abuse of discretion standard encompasses a review to determine whether the discretion was guided by improper legal conclusions. *Id.* Thus, it does not matter what we label our review when we consider the Department's argument that the trial court exceeded its authority in entering these two orders because the outcome will be the same under either standard of review.

¶ 63 Moving on to the merits, we look first to the March 2008 order in which the trial court ordered a local caseworker be assigned. Before the failure to perform statutory duties can form the basis for removal of the Department as guardian or be grounds for compelling it to perform its statutory duties, there must be proof that the Department has not fulfilled its statutory obligations.

In re Austin W., 214 Ill. 2d 31, 48 (2005).³ While courts do not have the authority to dictate the manner in which an agency performs a statutory duty, there is a distinction between ordering the removal and the reassignment of caseworkers and ordering that specific caseworkers be assigned to a case. *In re K.C.*, 325 Ill. App. 3d 771, 779 (2001) (reconciling statutory authorities of court in the Juvenile Court Act (705 ILCS 405/2-23(3), 2-28(2) (West 1996)). In *K.C.*, the appellate court explained that in its case the circuit court, “while ordering the removal of specific caseworkers from the case, still left to the discretion of DCFS the determination of which caseworkers to assign to the matter.” *Id.* The court explained that its order was different from other circuit court orders that supplanted its discretion for that of the Department’s by ordering specific services and providers. *Id.*

¶ 64 In this case, the trial court did nothing but order the Department to exercise its own discretion to assign a caseworker. The trial court did not require any specific agency or caseworker be assigned other than stating that a “local” caseworker be assigned. The Department still had its full discretion to assign whomever it wanted. Further, it was the Department itself that asked the court to force its local subcontracting agency to provide services to Elizabeth and Q.B. White told the court at the March 12 hearing that the deputy director of the Department assigned the case to a local “courtesy worker.” Thus, the Department had already exercised its discretion but requested the court enforce its own internal order, which the court objected to because it did not want to get involved in the Department’s internal affairs. The bottom line at the hearing, however, was that the State reported that no one had visited Q.B. or Elizabeth since Q.B. was taken into protective custody, and White

³ No party raises a question of mootness on this issue since the Department did assign a local caseworker, and there is no relief this court could grant to change that fact. However, like in *In re K.C.*, 325 Ill. App. 3d 771, 775-76 (2001), this issue qualifies for review under the public interest exception.

was requesting that the court compel the local agency to follow the Department's order. The trial court did not usurp the Department's already-exercised discretion by simply ordering the local caseworker to perform the Department's statutory obligations. The Department still had discretion to determine whom it assigned.

¶ 65 More disheartening than the Department's blaming of the trial court for CHASI's involvement in this case is that the Department apparently had already decided to assign a local caseworker yet now complains that the trial court order caused this. At the March 12 hearing, White informed the court that the deputy director had assigned the case to a local subcontractor "courtesy worker." At the March 24 hearing, White appeared but stated she was not Q.B.'s caseworker, and she did not know who was assigned to her case. On April 18, no caseworker appeared and the court ordered a rule to show cause for the Department's failure to have a caseworker appear. On July 17, Tryggestad of CHASI appeared, assigned to the case by the Department. While Tryggestad testified that she was assigned to Q.B.'s case around March 2008, she also testified that she was assigned to the case a couple of months after Ken and Connie reported no one from the Department had been out to see Q.B. in a month. Ken testified that they took Q.B. in March 2008. It follows that Tryggestad was assigned to the case sometime in June or July. Obviously, there was some internal confusion in the matter, and despite the March 12 order, the court's only response was a rule to show cause for the Department's failure to have *any* caseworker appear. From these facts, it appeared that the Department already decided that it wanted a local caseworker to handle Q.B.'s case regardless of the court order. Yet, the Department failed to demonstrate to the trial court that it had provided services for approximately three months while it internally handled the seemingly simple task of assigning *any* caseworker. Regarding the Department's repeated blaming of CHASI for its

mishandling of Q.B.'s case, we agree with the State's point that the "Department might as well place blame on itself" given the fact that the Department was at all times in this matter Q.B.'s guardian and chose to use CHASI instead of another subcontractor or Department caseworker. We therefore reject the Department's argument that the trial court improperly removed discretion from the Department in assigning a caseworker when it ordered it to assign a "local caseworker" per the Department's own request.

¶ 66 Next, we consider the propriety of the court's September 3, 2010 order prohibiting the Department from changing Q.B.'s placement pending an appeal filed by the foster parents and pending a best interests hearing. The Department argues that the trial court exceeded its authority by usurping its discretion as Q.B.'s guardian to place her in a qualified home. We disagree with the Department's characterization of the trial court's order. The State objected to the Department's decision to move Q.B., arguing that the foster parents had an appeal pending with the Department and requested the court delay the move in the best interests of the minor. In our view, the Department's decision represented a request to review the efforts in achieving the permanency goal, which up until that September hearing had been adoption by Q.B.'s current foster family. See *In re M.P.*, 401 Ill. App. 3d 742, 747 (2010) ("A change of placement request can be construed as seeking a review of efforts made to achieve the permanency goal and a foster parent's effort to support the permanency goal.").

¶ 67 Courts do not have original jurisdiction over the removal of a child from his parents based upon abuse, neglect, or dependency because the issue was not known at common law. *Id.* at 746-47. The Juvenile Court Act, however, confers limited jurisdiction over such matters on the circuit courts. *Id.* at 747. Because the court's powers are purely statutory, any action taken by the circuit

court that exceeds its jurisdiction is void and may be attacked at any time. *Id.* The purpose of the Juvenile Court Act is to serve the best interests of the minor. *Id.* Under section 2-28(2) of the Juvenile Court Act, the trial court is authorized to hold permanency review hearings until the service plan and permanency goal have been achieved. 705 ILCS 405/2-28(2) (West 2010); *id.* The trial court is to set a permanency goal that is in the best interests of the minor, and in doing so, shall consider factors such as: the child's age, the options available for permanence, current placement and intent of family regarding adoption, the emotional, physical, and mental status or condition of the child, and the status of the child's siblings. *Id.* Permanency review hearings may include a review of the efforts made towards achieving the permanency goal and service plan. *Id.* The trial court is given broad discretion in selecting a permanency goal in the best interests of the minor. *In re R.A.L.*, 319 Ill. App. 3d 946, 947 (2001). Accordingly, its decision regarding a permanency goal is entitled to deference and will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 68 In this case, the court did not order any specific placement or specific services for Q.B. when it prohibited the change of placement until a permanency hearing could be conducted. The Department relies on *In re Chiara C.*, 279 Ill. App. 3d 761, 766-69 (1996), for the proposition that the circuit court may not order specific services and placement over the named guardian (the Department). In *Chiara*, the GAL filed a motion requesting the trial court order the Department to place the minor at a licensed residential home for college-bound children. *Id.* at 764. The trial court granted the request and ordered the Department to immediately move the minor to the facility. *Id.* The appellate court agreed that the circuit court did not have the authority to order specific services or specific placements after appointing an agency as guardian. *Id.* at 766. It also determined by

ordering the placement of the minor in the residential facility, which required guardianship of residents, the trial court improperly had appointed two guardians; something not contemplated by the Juvenile Court Act. *Id.* at 767. In reversing and remanding the cause back to the circuit court for a permanency hearing at which the court could consider the present best interests of the minor, the appellate court ordered that the minor remain in her current placement pending the outcome of the permanency hearing. *Id.* at 768. Thus, the appellate court in *Chiara* simply did what the Department argues that the trial court erred in doing—ordering the minor remain in her current placement until the completion of the permanency hearing. Accordingly, we reject the Department’s argument that the trial court usurped its authority to place Q.B. in her grandparents’ home. It merely, upon the State’s objection and the testimony of Q.B.’s caseworker which demonstrated internal conflict in the Department regarding Q.B.’s adoption options, entered an order to protect Q.B.’s best interests until the court could conduct the permanency hearing to determine which party would be the legally appropriate party to adopt Q.B.

¶69 Finally, we consider the Department’s and the GAL’s arguments that the trial court’s ultimate best interests decision that Q.B. remain with Ken and Connie was against the manifest weight of the evidence. Once a child has been adjudicated abused, neglected or dependent, the court must determine whether it is in the best interests of the child to be made a ward of the court and enter a dispositional order that best serves the health, safety and interests of the minor and public. *In re Austin W.*, 214 Ill. 2d 31, 43 (2005). Although dispositional orders are generally considered final for the purposes of appeal, they are subject to modification in a manner consistent with the provisions of section 2-28 of the Juvenile Court Act, which provides in part:

“The minor or any person interested in the minor may apply to the court for a change

in custody of the minor and the appointment of a new custodian or guardian of the person or for restoration of the minor to the custody of his parents or former guardian or custodian.”

705 ILCS 405/28(4) (West 2010); *id* at 43-44.

¶ 70 Hearings conducted on petitions for a change in custody are simply further dispositional hearings, which must be conducted in accordance with section 2-22(1) of the Juvenile Court Act, which provides for a best interests hearing. *Id.* at 44. Thus, after the court has entered a dispositional order, the court may, at any time, vacate the original dispositional order and enter any other dispositional order that it could have entered under section 2-23(a) of the Juvenile Court Act, “thereby effecting a change in the custody and guardianship of the minor, if the court finds that to do so would be in the best interests of the child.” *Id.*

¶ 71 The best interest factors to be considered by the court in context of the child’s age and developmental needs as set forth in section 1-3(4.05) of the Juvenile Court Act include:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child’s identity;

(c) the child’s background and ties, including familial, cultural, and religious;

(d) the child’s sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child’s sense of security;

(iii) the child’s sense of familiarity;

- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2010).

¶ 72 Other important considerations when deciding a child's best interests are the nature and length of the child's relationship with the present caretaker and the effect that a change of placement would have upon the emotional and psychological well-being of the child. *In re Austin W.*, 214 Ill. 2d at 50. No factor is dispositive. *Id.* Under certain circumstances, a natural parent not found to be unfit may still have legally forfeited his rights to custody if it is in the best interests of the child to be placed in the custody of someone other than the natural parent. *Id.* at 51. “It follows then that if the best interest of the child conflicts with the statutory preference for placement with a close relative, the best interest of the child should control the placement decision.” *In re Violetta B.*, 210 Ill. App. 3d 521, 533 (1991). The court may consider all helpful evidence in a best interests hearing and may rely upon such evidence to the extent of its probative value. *In re Austin W.*, 214 Ill. 2d at 51. The proper standard of proof applicable during a best interests hearing is the preponderance of the evidence standard. *Id.* This court then reviews the trial court's best interests determination under

the manifest weight of the evidence standard. *Id.* at 51-52.

¶ 73 In this case, the foster parents filed a motion to modify guardianship from the Department to them and the grandparents sought to have Q.B. placed with them. The trial court properly conducted a best interests hearing to determine whether a change in custody should take place. The Department argues that the history of poor decisions in this case nullify the trial court's best interests determination because the trial court's decisions and CHASI's predetermined the outcome of the best interests hearing. The Department relies on *In re O.S.*, 364 Ill. App. 3d 628 (2006), for this proposition. However, we find *In re O.S.* distinguishable.

¶ 74 In *O.S.*, the Department placed the child with a foster family while the mother was incarcerated on drug-related offenses while the child's siblings were placed with their paternal grandparents. *Id.* at 630. While in jail, the mother completed several services despite the Department's failure to contact her or provide services to her and did not allow O.S. to visit her in prison. *Id.* After her release, the Department still made no efforts to reunify O.S. with her mother. *Id.* at 631. Further, the Department allowed visitation after the mother's release but would not allow O.S. to know that she was her mother and limited visits to twice per month. *Id.* at 632. The trial court concluded that O.S. had more of a bond with her foster parents and that it was in her best interests to terminate parental rights. *Id.* at 633. The appellate court reversed, finding that the impact of the deception perpetuated by the Department on the best interest determination was twofold: "(1) it allowed the potential adoptive parents additional time, *unimpeded by maternal claims of respondent* to further cement their ties with O.S. and (2) it denied respondent the right (and reasonable opportunity) to pursue efforts to restore her parental bond with her son and to achieve the family unification that she was making substantial efforts and progress to regain." (Emphasis in

original.) *Id.* at 641. The court held that to allow the best interest finding to stand under these circumstances where the Department actively misled and prevented the mother from regaining custody of her son, was unfair and unjust and violated both the statutory scheme and public policy.

Id.

¶ 75 In the case at bar, unlike in *O.S.*, the court was not concerned with terminating parental rights, which inherently involves the constitutional right of parents to have custody of their children. *Id.* at 637. Further unlike *O.S.*, the Department in this case did not actively prevent Elizabeth from reunifying with her children or prevent her from forming a bond. Even if grandparents had similar rights to custody of their grandchildren, which they do not (see *In re Adoption of C.D.*, 313 Ill. App. 3d 301, 314 (2000)), the Department did not prevent Pearl and Marvin from forming a bond with Q.B. by lying to Q.B. about who they were or who her siblings were, like the Department did in *O.S.* While the State told the court in September 2008 that she thought Elizabeth was going to sign over rights to have Pearl and Marvin adopt, papers were not signed for that adoption to take place and no one sought to have Q.B.'s placement changed. Rather, the parties proceeded with sibling and grandparent visits at the SOS Village's center. Pearl and Marvin did not appeal the Department's decision to consent to Ken and Connie's adoption of Q.B. until July 2010. At that point, visitation with Pearl and Marvin commenced and gradually increased to overnight visitation in order for the court to decide what would be in Q.B.'s best interests. Unlike in *O.S.*, the record does not reflect the Department actively blocking Pearl and Marvin from visitation or pursuing custody of Q.B. In fact, the record reflects the Department increased grandparent visits once Pearl filed an appeal with the Department. Therefore, we disagree that this case is comparable to the facts of *O.S.* such that the trial court's best interests determination is null and void because of the Department's or trial

court's conduct.⁴

¶ 76 Moving on, the Department and the GAL argue that the trial court's best interests determination is against the manifest weight of the evidence. Both parties argue that the trial court overemphasized Q.B.'s attachment to Ken and Connie and underemphasized the importance of the opportunity that Q.B. be raised by her biological grandparents along with her sibling, Marvin Jr. The Department argues that because Connie did not testify, there was no evidence that Q.B. was attached to her as a mother and therefore the trial court's factual finding that Q.B. had a sense of attachment and security with Ken and Connie was against the manifest weight of the evidence.⁵ It further argues that the trial court placed too much weight on the testimony of Wagner and too easily disregarded the opinion of expert witness Mahan. We disagree with the Department's and the GAL's argument that the trial court's decision that it was in Q.B.'s best interests to remain with Ken and Connie and to grant Ken and Connie guardianship of Q.B. was against the manifest weight of the evidence.

¶ 77 Contrary to the Department's argument that the trial court only relied upon five of the enumerated statutory factors in section 1-3(4.05), the "law is clear that a trial court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision." *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004). Further, our review of the record indicates that the trial court considered all statutory factors and additionally considered the nature and length of Q.B.'s relationship with her foster parents and the

⁴ We similarly reject the Department's reliance on *In re Austin W.*, 214 Ill. 2d 31 (2005) that the court's focus was skewed and thus precluded a fair best interests inquiry where the trial court in *In re Austin W.* inappropriately decided *sua sponte* that the grandparents had not abused the minor despite the evidence showing that the Department's administrative law judge had concluded the opposite. The trial court in this case did not rely on facts not before it.

⁵ Interestingly, the Department does not address the converse "evidentiary gap" caused by Marvin not testifying.

effect a change in placement would have when it issued its decision. The trial court simply chose to discuss some of the factors in more detail. Unlike the Department, we do not find the court's decision "hazy" or containing "glaring structural deficiencies."

¶ 78 In *In re Adoption of C.D.*, 313 Ill. App. 3d at 303, the trial court determined that it was in the minor's best interests to be adopted by her foster parents rather than her grandparents. When C.D. came into the Department's custody, the goal was to return her to her mother's care. *Id.* The Department initially placed C.D. in a foster family but explored the option of her grandparents taking her. The grandparents lived in Virginia, however, and the Department determined that placing C.D. with them would prevent C.D. from visiting with her mother and impair the goal of reuniting mother and child. *Id.* at 304. C.D. was ultimately placed with foster parents, Melissa and Phillip. *Id.* After numerous delays in the grandparents' home being approved, Melissa and Phillip filed a petition to adopt C.D. to compete with the grandparents' petition to adopt. *Id.* at 304-06. The trial court conducted a best interests hearing at which numerous caseworkers and counselors agreed that while the grandparents were an acceptable placement for C.D., it was in her best interests to be adopted by her foster parents because C.D. was well-bonded to them. *Id.* at 306. The grandparents, like the Department and the GAL in this case, argued in large part that they would be the best home for C.D. because of their biological connection to her and because they had custody of her younger half-brother. *Id.* at 307. The appellate court, in affirming, stated that preservation of family ties was not the only consideration the trial court was to consider and no factor held a greater value than another. *Id.* at 308-09. The appellate court noted that the circuit court stated it had a difficult decision given that both homes would be suitable, that it was important for C.D. to maintain relationships with blood relatives and siblings, and that the foster parents had done an excellent job in nurturing C.D.

over the last two years. The appellate court affirmed after reviewing the record and finding that the circuit court's decision to grant custody to the foster parents was not against the manifest weight of the evidence. *Id.* at 308.

¶ 79 Similarly, in this case, the trial court noted that both homes were suitable for Q.B.'s care. Our review of the record demonstrates that the trial court considered all relevant factors, heard an abundance of testimony from various caseworkers that worked on Q.B.'s case, therapist Wagner, therapist Mahan, Ken, and Pearl, and viewed a number of exhibits. The record demonstrates that the trial court carefully considered the testimony and evidence, finding that Q.B. has been with Ken and Connie since she was 10 months' old, and they were committed to raising Q.B. in a multi-cultural environment and maintaining her relationship with her grandparents and siblings. The court noted the evidence showed Q.B. knew Ken and Connie to be her parents, had relationships with their extended families, and considered J.J. her brother. While Q.B. had been allowed to bond with her brother, Marvin Jr., and her grandparents, that bond was not her primary bond. The court noted that there was evidence that Q.B. had negatively responded to overnight visits with her grandparents because she feared she would not be able to return to Ken and Connie. Her reaction improved when she was reassured she would return home to Ken and Connie. The court acknowledged that Mahan and Wagner offered conflicting opinions as to what effect a change in placement would have on Q.B. Mahan opined the short-term trauma of removing Q.B. from her foster parents was outweighed by the long-term benefit of being raised by a family with racial and biological ties. Wagner opined that terminating a relationship with Ken and Connie would be more traumatic for Q.B. since she was primarily bonded with them. The court noted Mahan never met Q.B. despite offering her opinions.

¶ 80 The Department argues at length that Mahan was the only expert to testify and the court

erroneously disregarded her opinions. However, we note that expert opinions are only as valid as the bases and reasons supporting them. *In re C.B.*, 248 Ill. App. 3d 168, 176 (1993). Here, Mahan provided her opinions without observing or meeting with Q.B. or her foster parents. Instead, she based her opinion on reports filed and information provided to her by the Department. In drawing her conclusions, Mahan placed great emphasis on the fact that because Ken and Connie changed their preference to take in only Caucasian or Hispanic children in the future, they could not possibly nurture Q.B.'s racial and cultural background in a positive way. However, Mahan never spoke to Ken and Connie about this matter. The evidence showed that Ken and Connie were nurturing Q.B.'s race and culture, had adopted J.J., who was biracial, and fostered Q.B.'s relationship with her siblings and grandparents. Therefore, we reject the Department's and the GAL's arguments that the trial court improperly weighed Mahan's opinions.

¶ 81 Further, while the parties spent an inordinate amount of time arguing about Q.B.'s hair care, the evidence reflected that Connie made efforts to learn to properly care for her hair at the outset and Q.B.'s hair was never neglected. Contrary to the Department's and the GAL's arguments that the trial court did not adequately consider the factors, our review of the record disclosed that it did so. Pursuant to the statute's language, the trial court considered Q.B.'s sense of attachments as to where Q.B. felt love, attachment, and a sense of value "*as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued.*" (Emphasis added.) 705 ILCS 405/1-3(4.05)(d)(i) (West 2010). While the Department and the GAL may believe Q.B. should be attached to her grandparents because they prefer to place children with siblings and relatives, that is not where she was placed and that is not where Q.B. demonstrated her sense of attachments. While the outcome of Q.B.'s case may have been different had the Department initially placed her

with Pearl and Marvin or another foster family, that is true of any case it handles and any case before the trial court. However, the trial court was correct in evaluating the factors under the present circumstances, and its decision that it was in Q.B.'s best interests to appoint Ken and Connie her guardians was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the trial court.

¶ 82

III. CONCLUSION

¶ 83 For the aforementioned reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 84 Affirmed.