2026 IL App (1st) 251913

FIFTH DIVISION
August 26, 2026

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 1-25-1913

In re K.W., a Minor,	)	
	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 19 JA 01584
v.	)	
	)	Honorable
E.H.,	)	Lisa M. Taylor,
	)	Judge Presiding.
Respondent-Appellant).	)	

JUSTICE MIKVA delivered the judgment of the court, with opinion.
Presiding Justice Mitchell and Justice Oden Johnson concurred in the judgment and opinion.

OPINION

¶ 1 The mother in this child protection case appeals from a final order closing the case and granting private guardianship of her now six-year-old son to his paternal grandmother. She argues the circuit court's determination that this result is in the child's best interest is against the manifest weight of the evidence, given her significant bond with the child, established through frequent and consistent visitation; her near-perfect record of compliance with recommended services; evidence suggesting that, absent court involvement, she will see far less of her son; and the unanimous recommendation of the assigned caseworkers and agencies that a single urine test positive for alcohol in 2023 did not justify a change from the permanency goal of return home. For the reasons

that follow, we agree and reverse the decision of the circuit court.

¶ 2 I. BACKGROUND

¶ 3 A. Initial Proceedings

¶ 4 The respondent in this matter, E.H., is the biological mother of K.W., born on November 25, 2019. K.W.'s biological father, alleged by the State to suffer from serious psychological conditions affecting his ability to parent, was defaulted in the circuit court and is not a party to this appeal. Just over a month after he was born, the State petitioned for K.W. to be made a ward of the court, on the grounds that he was neglected or abused, pursuant to section 2-3 of the Juvenile Court Act (Act) (705 ILCS 405/2-3 (West 2018)).

¶ 5 This case came to the attention of the Department of Children and Family Services (DCFS) when K.W. was born. At the hospital he was treated for respiratory failure in the neonatal intensive care unit (NICU). In investigating the case, the State learned that E.H. had been diagnosed with major depressive disorder and was receiving psychiatric and substance abuse services at the Bobby E. Wright Comprehensive Behavioral Health Center (Bobby Wright). The petition alleged that E.H. had admitted to a hospital social worker that she drank wine on a regular basis throughout her pregnancy and, later, to a child protection specialist, that she took prescribed psychotropic medication throughout her pregnancy without informing her doctor that she was pregnant.

¶ 6 The circuit court found probable cause to grant DCFS temporary custody of K.W. on December 30, 2019, and he was placed in foster care with A.S., his paternal grandmother. E.H. was granted supervised day visits of not less than three hours per week.

¶ 7 At adjudicatory and dispositional hearings held on January 15 and March 8, 2021, respectively, the circuit court found that K.W. was neglected due to an injurious environment (*id.* § 2-3(1)(b)) and that E.H. was unable to care for him (*id.* § 2-27(1)). Noting that DCFS was

recommending unsupervised day visits and that E.H. was consistently engaged in visitation, had been referred for a parent capacity assessment, and was beginning parenting coaching, the court set a permanency goal of return home within 12 months and ordered unsupervised day visits at least once per week and unsupervised overnight visits at DCFS's discretion. The next permanency hearing was set for September 10, 2021.

¶ 8 B. Progress Under the Permanency Goal of Return Home

¶ 9 On June 9, 2021, the guardian *ad litem* (GAL) filed an emergency motion to suspend unsupervised day visits. The GAL alleged that several days earlier, E.H. and her adult son fought with and seriously injured K.W.'s father while at E.H.'s home. The court granted the motion without prejudice, pending a hearing on the matter, but the GAL dropped the motion before it was heard, and the prior visitation order was restored.

¶ 10 Following permanency hearings on September 10 and 22, 2021; November 30, 2022; and January 30, 2023, the permanency goal remained return home within 12 months. The court noted, despite one urine test that was positive for alcohol in April 2022, that E.H. was engaged in services, was consistent with visitation, and had made substantial progress toward the goal of return home. A comprehensive assessment by the Cook County Juvenile Court Clinic in January 2023 (Clinic Report) concluded that, while E.H. would always be at some risk for relapse, "she ha[d] always been good with [K.W.]" and was likely to make the gains necessary for him to return home.

¶ 11 Following the original trial judge's retirement, in early 2023 the case was assigned to a different judge, and at a permanency hearing on July 5, 2023, the goal was changed to return home within five months. The court noted that E.H. "continue[d] to fully participate in services and to visit with [K.W.] regularly." Unsupervised day and overnight visits continued to be permitted at DCFS's discretion. Although the precise visitation schedule is unclear, statements made by both

the GAL and the ASA at later hearings suggest that K.W. was spending four to six nights a week with E.H., unsupervised. E.H. also reported to her doctor around this time that her son had "been with her 4 days per week for 6 months."

¶ 12 The case, which was set for a "motion to return home" on March 6, 2024, appeared to be drawing to a close with a return home of K.W. to his mother.

¶ 13 C. Change of Permanency Goal

¶ 14 A year and nine months after her last positive urine test in April 2022, E.H. tested positive for alcohol on January 23, 2024. Stating that her "participation in services need[ed] to be clarified," on March 6, 2024, the circuit court changed the permanency goal back to return home within 12 months and ordered E.H. to complete 75 hours of intensive outpatient substance abuse treatment. E.H. promptly obtained and engaged in this treatment. The court entered an order for supervised visits, with unsupervised visits only at DCFS's discretion.

¶ 15 Although DCFS continued to recommend that K.W.'s permanency goal be a return home within 12 months, on April 18, 2024, the State, joined by the GAL, asked the court to change the goal to private guardianship. A multi-day permanency hearing was held throughout the spring, summer, and early fall of 2024. Documentary exhibits received by the court in connection with that hearing, which this court has reviewed, included E.H.'s mental health, clinical, and substance abuse treatment records and parenting assessment reports, including the comprehensive January 2023 Clinic Report.

¶ 16 The assistant State's attorney began the hearing by expressing her belief that K.W.'s longtime caseworker, Tanya Knight, was biassed in E.H.'s favor and should be removed from the case. A.S., K.W.'s paternal grandmother and foster parent, had reported that Ms. Knight was hostile to her and had expressed her frustration that K.W. had not already been returned to his

mother. E.H.'s counsel objected to Ms. Knight's removal, arguing that she had done her best, given a history of tension between E.H. and A.S., and knew the case "pretty much inside and out." The court reserved ruling on the matter, and Ms. Knight took the stand.

¶ 17 Ms. Knight testified that she had been K.W.'s caseworker for two years, since March 2022. She had last him the week before at A.S.'s home, which had appeared safe and appropriate, with no signs of abuse or neglect. Ms. Knight was concerned, however, that K.W. was still sleeping in the same bed as his grandmother. When she asked A.S. about this, A.S. explained that she had been startled one night by K.W. standing in her doorway, "like Chuckie" from the horror film, and decided he should just sleep in her bed after that. E.H. had also reported to Ms. Knight that A.S. was letting K.W. ride in the front seat of her vehicle, a van in which the rear rows of seats had been removed, even after Ms. Knight had warned her that this was not safe, and A.S. had agreed not to do it anymore.

¶ 18 Ms. Knight also related that parent-child interaction therapy, a recommended service, was not occurring because there was no way to get K.W. to those sessions. The transportation company that brought him to supervised visits would not transport him to what it considered medical appointments, and another available company required someone over the age of 18 to ride with any minor. Although Ms. Knight agreed with the State that it was her agency's job to ensure K.W. attended all required services, she was not able to transport K.W. herself because she had parent-child visits in another case at the same time. Ms. Knight expressed her frustration with the fact that A.S., as the foster parent, had made no effort to help.

¶ 19 Ms. Knight testified that when E.H. thought K.W. was going to be returned home to her soon, she had arranged for him to attend preschool, as recommended by DCFS. Since the permanency goal was changed, however, he had not been enrolled. A.S. told Ms. Knight that she

had tried to enroll him but was not able to. He was enrolled, however, for kindergarten the following year at the University of Chicago Lab School. K.W. was classified as "specialized," and there was a Clinical Intervention for Placement Preservation (CIPP) scheduled for him on the following day, to see if his case should be moved to a specialized agency.

¶ 20 Ms. Knight agreed that since the last court date, visits had been supervised, some by a driver, whose notes Ms. Knight received and which she testified reported only positive interactions and no concerns. Ms. Knight had also personally observed four in-home visits and saw no sign that E.H. had been drinking or had alcohol in the house.

¶ 21 As Ms. Knight stated in her notes, E.H. was always appropriate during those visits; she had appropriate toys for K.W., played with him, and cooked food for him. Ms. Knight recorded that on March 12, 2024, they ate chicken and beans, played with building blocks, painted a jewelry box, and made an Easter basket. Ms. Knight noted, "the youth and his mother appeared to have a great relationship and loving bond. The youth was extremely sad when it was time to leave." On March 26, 2024, they created a poster board together, played a catching game, and made a snack. On March 29, 2024, they practiced tracing letters and numbers, played games, sang songs, watched a program about dinosaurs, and colored Easter eggs. On April 7, 2024, they worked on a numbers game and coloring sheets, sang Happy Birthday and had cake (it was E.H.'s birthday), completed an alphabet maze, practiced learning K.W.'s address, and danced together.

¶ 22 Ms. Knight reported that K.W. often refused to eat at E.H.'s house, saying he would eat when he got home. K.W. called A.S. "Mommy" and E.W. "Mommy Ebby," and on at least one of those occasions, he told Ms. Knight that "his mama [told] him not to eat Mama Ebby's food."

¶ 23 Ms. Knight also reported that when she drove K.W. back to A.S.'s house after visits with his mother: "He has sometimes refused. He'll want to get out the car. He has teared up. And he

always says I don't want to go." When driving him back to A.S.'s home on March 12, 2024, she asked him whether he wanted to live with his mother or grandmother, and he said "Mommy," and on March 26, 2024, she wrote in her notes: "KW cries or is always sad when the worker brings him back to the caregiver's home."

¶ 24 Ms. Knight testified that E.H. was subject to random urine drops every week, sometimes twice a week, and had complied with all of them. Ms. Knight was asked about the positive test result on January 23, 2024. E.H. consistently represented to Ms. Knight and to Ms. Knight's supervisor at DCFS that the test came back positive not because she had drunk alcohol but because she had taken NyQuil for a cold. Ms. Knight reached out to the provider that did the test, and they confirmed that taking a medication like Nyquil or ZzzQuil could cause a positive result.

¶ 25 Ms. Knight acknowledged that E.H. gave different explanations for the positive result to her various service providers and agreed that this was concerning. The documentary evidence in the record indicates that E.H. told her therapist that she had trouble refilling her prescription medication and took ZzzQuil to help her sleep. At a telehealth visit with her prescriber, she said that she had not had alcohol in two-and-a-half years. She told workers at Bobby Wright, however, that she drank alcohol after losing an aunt she was close to. And when she was trying to preemptively get enrolled into the intensive outpatient substance abuse treatment program at Healthcare Alternative Systems (HAS) that the court would later order her to attend as a result of the positive urine test, E.H. gave a detailed account of a purportedly severe relapse, indicating that she had not been sober for more than two weeks at a time at any point in the past year.

¶ 26 Having reviewed all of this, however, Ms. Knight said that she and her supervisor at DCFS nevertheless believed what E.H. had told them. "[S]he knew she wasn't going to get into treatment if she told them she just took Nyquil," Ms. Knight explained, and "she felt like she needed to get

herself into treatment because of the positive drop." "[W]e were not there," Ms. Knight, continued, "so we don't know if this mother had a drink or not." "We only can go by her drops," and "[a]ll of them were negative except for the one."

¶ 27 An individual named Michael at HAS reported to Ms. Knight that E.H. was doing well in their program, which met for three hours a day, three times a week. She had missed only one session and was on track to complete the program by the end of April.

¶ 28 Ms. Knight acknowledged that E.H. had at first resisted attending meetings of Alcoholics Anonymous (AA), saying she did not think that was necessary. They had not discussed that recommendation further while E.H. was attending HAS, but Ms. Knight had raised it again recently, recommending that E.H. obtain a sponsor, and E.H. had agreed that it "wouldn't hurt" for her to do that.

¶ 29 Ms. Knight reported that, in addition to participation in the intensive outpatient treatment at HAS, E.H. had attended her latest psychiatric appointment and was taking her prescribed medication. Ms. Knight testified that there were no other services that E.H. was referred to that she was not participating in. E.H. had also complied in a timely manner with every request for a urine test since the positive test result in January.

¶ 30 Ms. Knight agreed that she had occasionally expressed her personal opinion about the case in a group text message with E.H. and A.S., including her frustration that A.S. "manipulate[d] things" and had "disrupted the visits." This was a concern Ms. Knight and her supervisor had discussed with A.S. on five or six occasions. At one point, Ms. Knight texted, "[E.H.], I hate that you as a mother can't see your child on a regular basis" and "I've never seen anything like this." She also confronted A.S. when E.H. told her A.S. had offered her alcoholic drinks, saying she should know better than to do that when E.H. was trying to maintain her sobriety, and A.S. had

said "yeah, I know" and "I won't do that anymore." Ms. Knight felt A.S. was not only trying to sabotage E.H. but was making it more difficult for Ms. Knight as a caseworker to provide reunification services, in an effort to force her off the case. Requiring someone new to learn the case would, in Ms. Knight's view, only turn back the progress that had been made.

¶ 31 In response to the State's concerns, and over the objection of defense counsel and the attorney for DCFS, Ms. Knight was removed from active management of the case.

¶ 32 Andrea Brown, E.H.'s therapist from the Catholic Charities agency since May 2020, testified at the permanency hearing that E.H. had made progress and responded positively to her recommendations. E.H. had told Ms. Brown that she tested positive for alcohol in early 2024 because she took cold medicine. Ms. Brown understood that E.H. had told her treatment provider at HAS a different story, but had explained to her, as she had to DCFS, that she made up the story about relapsing so that she could get into treatment more easily, because she was eager to show the court that she was motivated to achieve a return home.

¶ 33 Jose Thomas, Ms. Knight's DCFS supervisor, took the stand to confirm that he too was recommending a permanency goal of return home within 12 months. He believed the explanation E.H. gave to DCFS about the positive test result in early 2024—that she had said what she felt was necessary to "get into services quickly." He told the court: "I think this mom is doing everything possible to correct the conditions. So I stick with the goal of return home." Mr. Thomas testified that K.W.'s CIPP report had come back, and he was being transferred to a specialized agency.

¶ 34 On the last day of testimony, September 6, 2024, the court heard from K.W.'s new caseworker, Shelby Foster. Ms. Foster testified that was employed by UCP Seguin and had been assigned to the case for approximately one month. She last saw K.W. the day before, on a visit to his preschool, and had observed him within the past month at A.S.'s home, which she found to be

safe and appropriate. She had also met with E.H., who was engaged in all recommended services. She participated in individual therapy; was compliant with her prescribed medication, as monitored by her psychiatrist; was attending AA; and had a sponsor whom she met with weekly. On cross-examination by the State, Ms. Foster agreed that she had no documentation confirming E.H.'s AA attendance but stated that she would obtain it.

¶ 35 Ms. Foster had sent E.H. for two urine tests. She missed the first one because she was out of town helping a relative, and the second test was scheduled for later that day. Ms. Foster agreed that a missed test was considered a positive drop but explained that this was a "missed communication on both ends," because she had scheduled the test with the mistaken belief that E.H. was coming back a day earlier than she actually was.

¶ 36 Ms. Foster reported that K.W. had been evaluated and was developmentally on target. E.H. visited with him every Friday for three hours. The visits were supervised by the transportation company that brought him, and it had reported no concerns. Ms. Foster had personally observed one visit and also had no concerns. K.W. appeared to be bonded to E.H. She cooked for him and they spent the visit playing games and watching TV. Ms. Foster, in consultation with her supervisor, recommended a permanency goal of return home within 12 months.

¶ 37 Counsel for DCFS supported the recommendation of the new agency. They were newly assigned and had a fresh perspective, but they were still getting to know the family. The court should enter a goal of return home and allow the agency to work with the family.

¶ 38 The GAL stood by its recommendation that the permanency goal should be changed to guardianship. "This is a 2019 case that came into care due to [E.H.]'s alcohol use during her pregnancy," counsel stated, "[a]nd it's an issue that may still be of concern." The GAL pointed out that the court had "heard conflicting testimony" regarding E.H.'s "use or potential use of alcohol."

Changing the goal would "allow [E.H.] to continue to work on herself while allowing her parental rights to remain intact," but would give K.W. "some semblance of stability" and "the permanence that he need[ed]."

¶ 39 The State likewise asked the court to "rule out return home" and enter a goal of guardianship. The new agency and caseworker assigned to this case had no new information to report except what E.H. had told them, the ASA pointed out, and E.H.'s statements "[had] been suspect in the past." She had also missed a drop for reasons that could not be confirmed, and it "seem[ed] like a convenient excuse."

¶ 40 Counsel for E.H. reminded the court that the only recommendation from any of the caseworkers was that the goal should remain return home.

¶ 41 Stating that she wanted to get K.W. permanency, "as quickly as possible so we get him out of the system," the judge entered a goal of private guardianship. The judge explained to E.H. that she knew there were "some issues" between her and A.S., and that, for instance, A.S. had offered E.H. wine, knowing that she was working to maintain her sobriety. The judge believed that it was in K.W.'s best interest to have a relationship with E.H. but that, "more importantly, he ha[d] to have a permanent situation." The judge concluded by stating: "I understand that [A.S.] will make sure that it is more than the once a month visit that you have with your son. That you two will work together to ensure that we raise a happy, healthy young man. So, that's my ruling."

¶ 42 E.H. moved to reconsider the changed permanency goal, arguing that K.W.'s former caseworker, that caseworker's supervisor, and the newly assigned caseworker and her supervisor had all recommended a goal of return home within 12 months. Counsel also pointed out—attaching a HAS discharge summary and AA meeting logs to the motion—that since the last hearing, E.H. had completed substance abuse treatment and was participating in AA meetings with a sponsor.

The court denied the motion to reconsider on December 13, 2024. Another permanency hearing was held on April 30, 2025, and the court again entered the goal of private guardianship. The court gave as its reasons: "Considering the best interest factors and since 2021 NM has not been found fit willining [*sic*] and able. Minor needs permanency now."

¶ 43 D. Closure of the Case to Private Guardianship

¶ 44 Given the new permanency goal, DCFS petitioned the court on August 14, 2025, to appoint A.S. as K.W.'s private guardian and to close the case. At the hearing on that motion, held on August 22, 2025, Ms. Foster testified that she had last visited A.S.'s home a week ago and it appeared safe and appropriate, a background check revealed that A.S. had no felony convictions, and she and K.W. appeared to have a good relationship and were well-bonded. A.S. had indicated that she would allow E.H. to visit K.W. even if the case was closed.

¶ 45 K.W. had not said anything to Ms. Foster that led her to believe he was unhappy or unsafe living with A.S., though she acknowledged he "didn't really understand due to his age" what guardianship was. When she had asked him how he would feel living with A.S., he simply said, "I already live with [A.S.]"

¶ 46 Ms. Foster reported that K.W. was in kindergarten. He had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) but did not have an individualized education program (IEP) yet because the school needed to reevaluate him. Ms. Foster believed that as his guardian, A.S. would be able to advocate for all of his educational needs if the case were closed, and there was no further need for the court to continue monitoring his case. Ms. Foster and her supervisor agreed, given the new permanency goal, that it was in K.W.'s best interest for A.S. to be appointed as his private guardian.

¶ 47 Ms. Foster emphasized, however, that it was important for K.W. to continue to have a

relationship with E.H. Although reunification services were no longer being provided, E.H. had continued to attend therapy and AA meetings on her own.

¶ 48 A.S. then took the stand and confirmed that she wished to become K.W.'s private guardian. She understood what this would entail and believed she could adequately care for him without outside assistance. She agreed that E.H. would be allowed to visit K.W. at least once a month, supervised or unsupervised, at her discretion.

¶ 49 Counsel for E.H. again argued that private guardianship was not proper where E.H. continued "to demonstrate that she ha[d] resolved those issues" that brought this case in and had maintained a close relationship with K.W.

¶ 50 The circuit court judge stated that she appreciated the objection and understood substance abuse was a daily challenge. "[B]ut this is a 2019 case," she said, "and we never got to the point where she had unsupervised visits for a consistent period of time with her son, which would allow for the Court to reunify her with her son." The judge agreed that it was "paramount" for K.W. to continue to maintain a relationship with E.H. She was also aware that there had been "friction" between E.H. and A.S., but A.S. had repeatedly assured the court that she would facilitate a relationship between K.W. and E.H., and the judge explained that she needed to do what was in K.W.'s best interest based on the factors set out in the Act. The court did not elaborate further in its order, stating simply that closing the case to private guardianship was "in [the] minor's best interest."

¶ 51 E.H. now appeals.

¶ 52 II. JURISDICTION

¶ 53 An order terminating wardship and closing juvenile proceedings pursuant to section 2-31(2) of the Act (705 ILCS 405/2-31(2) (West 2024)) is a final and appealable judgment. *In re*

M.M., 337 Ill. App. 3d 764, 777 (2003). The circuit court here entered such an order on August 22, 2025, and E.H. filed a timely notice of appeal from that order on September 19, 2025. We have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments in civil cases, and Rule 660 (eff. Oct. 1, 2001), governing appeals in cases arising under the Act.

¶ 54 III. ANALYSIS

¶ 55 E.H. argues on appeal that the evidence did not support the circuit court's decision to close this case to private guardianship. The GAL, whose brief and arguments the State adopts, and whose points are echoed by DCFS in its own brief on appeal, urges us to conclude the opposite. Having reviewed the record and the case law, it is clear to us that closing this case to guardianship was not in K.W.'s best interest.

¶ 56 A. The Legal Framework

¶ 57 Underlying every provision of the Act is the understanding that "parents have a fundamental liberty interest in the care, custody, and control of their children." *In re M.M.*, 2016 IL 119932, ¶ 26. Because no minor may be taken, even temporarily, from a fit, able, and willing parent, wardship is only granted when the court finds by a preponderance of the evidence at a dispositional hearing that the parents of an abused or neglected minor are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so." 705 ILCS 405/2-27(1) (West 2024); *In re April C.*, 326 Ill. App. 3d 225, 238 (2001) (preponderance standard applies).

¶ 58 The court then hears evidence regarding what disposition will best serve "the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2024). DCFS is commonly given the authority, as it was here, to place the minor in foster care. *Id.* §§ 2-23(1)(a)(2), 2-27(1)(d).

The dispositional order is not a final determination of either the parent's abilities or the proper permanent situation for the child. It is a snapshot in time memorializing the reasons the child was made a ward of the state that is intended to give the parent "fair notice of what they must do to retain their rights to their child." *In re G.F.H.*, 315 Ill. App. 3d 711, 715 (2000).

¶ 59 Permanency review hearings, held at least every six months thereafter (705 ILCS 405/2-28(2) (West 2024)), serve as a continuation of the dispositional hearing (*In re M.D.*, 2022 IL App (4th) 210288, ¶ 72). The court sets a permanency goal, determines the appropriateness of the services offered in support of that goal, establishes whether those services have been provided, and considers what progress has been made. 705 ILCS 405/1-3(11.2) (West 2024). Section 2-28 of the Act establishes a hierarchical structure of permanency goals. *Id.* § 2-28. The court must first consider whether the child can return home within five months, then within one year, and only after ruling out those goals may it consider alternative permanency options like private guardianship or termination of parental rights leading to adoption. *Id.*

¶ 60 Where, as in this case, the court has closed the case to private guardianship, the court must find, by a preponderance of the evidence, that that result is in the child's best interest. *In re Kam B.*, 2024 IL App (1st) 240599, ¶ 50 (citing *In re D.T.*, 212 Ill. 2d 347, 366 (2004)). We will not disturb that decision on appeal unless it is against the manifest weight of the evidence—*i.e.*, where "review of the record demonstrates the proper result is the one opposite that reached by the trial court." (Internal quotation marks omitted.) *In re D.S.*, 317 Ill. App. 3d 467, 472 (2000).

¶ 61 Whenever any determination is made regarding what is in the best interest of a child, the court must consider, "in the context of the child's age and developmental needs," the following factors set out in section 1-3(4.05) of the Act:

> "(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, including the child's wishes regarding available permanency options and the child's wishes regarding maintaining connections with parents, siblings, and other relatives;

(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, 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, including willingness to provide permanency to the child, either through subsidized guardianship or through adoption." 705 ILCS 405/1-3(4.05) (West 2024).

¶ 62 Although E.H. suggests we should also look to the best-interest factors found in section

2-28(2.4) of the Act (*id.* § 2-28(2.4)), as the GAL points out, those factors are only relevant to the court's determination that a permanency *goal* is in the child's best interest. E.H.'s appeal is not from the circuit court's decision to change K.W.'s permanency goal to private guardianship but rather from its final judgment granting private guardianship on a permanent basis and closing the case. We agree with the GAL that the factors specifically applicable to the court's decision to close this case to guardianship are the ones set out in section 1-3(4.05) of the Act.

¶ 63 Those are the same best-interest factors that apply where the State has successfully petitioned for a termination of parental rights so that a minor may be adopted. *In re M.W.*, 2019 IL App (1st) 191002, ¶ 59. When that has occurred, application of the factors is usually quite straight forward. The court will have already found by clear and convincing evidence that the parent is "an unfit person" due to abandonment, desertion, substantial neglect, extreme or repeated cruelty, or "[f]ailure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare." 705 ILCS 405/2-29(2) (West 2024); 750 ILCS 50/1(D) (West 2024). In such cases, the bond between the parent and the child has been severed, practically and legally, and the only decision to be made is if the child will be happy and well-cared for in a particular adoptive placement.

¶ 64 Closing a child protection case to private guardianship, as the circuit court did here, is a different thing altogether. It does not require a finding of parental unfitness and does not extinguish a parent's rights to their child. Under section 1-3(13) of the Act, certain residual rights and responsibilities remain with the parent—including the right to reasonable visitation, the right to consent to adoption, the right to determine the minor's religious affiliation, and responsibility for the minor's support. 705 ILCS 405/1-3(13) (West 2024). The guardian's authority is expressly exercised subject to those residual rights (*id.*), and the parent may seek to enforce visitation or

reopen the case and reinstate wardship if it is in the minor's best interest (*id.* § 2-33).

¶ 65 The best interest analysis a court conducts when parental rights are intact and there is a demonstrated parent-child bond will look far different from the one it conducts when there has been a termination of parental rights. The factors themselves, which require the court to consider the development of the child's identity; his background and ties; his sense of attachment, including where he feels love; his sense of familiarity; his need for continuity of affection; his desire to maintain connections with parents, siblings, and other relatives; and the wishes of those available to care for him, all inherently require the court to consider the importance to the child of maintaining and strengthening the parent-child relationship.

¶ 1 With these considerations in mind, we address the parties' arguments and explain why we agree with E.H. that the circuit court's conclusion that closure of this case to private guardianship was in K.W.'s best interest was against the manifest weight of the evidence.

¶ 2 B. The Physical Safety and Welfare of the Child

¶ 3 E.H's primary argument on appeal is that one positive urine test in January 2024 does not negate her years of sobriety and near perfect compliance with services nor provide a basis upon which to question whether K.W. would be safe and cared for with her. She emphasizes that there was a gap of over a year following her only other positive test result in this case, in April 2022, and that she has had no subsequent positive tests since, even after services in support of K.W.'s return home ceased and she has submitted to routine urine tests on her own.

¶ 4 E.H. persuasively argues that both prior to and following the January 2024 positive urine test, she made substantial progress in addressing any issue that caused concern about K.W.'s safety and welfare. She consistently took her prescription medication and met with her therapist, was engaged in substance abuse recovery services, and regularly and consistently submitted for urine

tests.

¶ 5 This one positive test appears to be the motivating force in changing the goal from a prompt return home to closing the case to private guardianship. Just before that test, in mid-2023, the circuit court had changed the permanency goal to return home within five months, and a hearing was scheduled for early 2024 for a permanency review hearing and "motion to return home."

¶ 6 The GAL tries to justify the court's reliance on this single positive result by focusing on the conflicting stories E.H. gave to explain it. E.H. told both the caseworker and her longtime therapist that she took ZzzQuil, an over-the-counter cold medicine, to help her sleep. She explained to the caseworker that she only told HAS that she had had a full relapse because she was desperate to get into a treatment program, something she anticipated the court would require of her, and which it in fact did require of her at the next hearing. The GAL questions why it was necessary for E.H. to support her claimed relapse with so many apparently fabricated, and exaggerated, details—that she had not been able to remain sober for more than two weeks at a time during the whole past year, for example. This suggests, the GAL argues, that what she told HAS was in fact the truth. But that is simply not plausible. Ms. Knight testified, without contradiction, that E.H. regularly submitted to weekly and sometimes twice-weekly urine tests. While the positive result may have been caused by a relapse, it certainly was not a relapse of the magnitude that E.H. reported to HAS.

¶ 7 Even if E.H. suffered a relapse, and even if she lied about it, it simply does not follow that a single positive urine test affected K.W.'s physical safety and welfare while in her care. There is absolutely no suggestion in this record that E.H., who regularly interacted with agency personnel, the foster parent, and individuals responsible for transporting and supervising K.W. during his visits with her, ever had alcohol in her home or was intoxicated when she was with her son or that any relapse was more than a single incident during a lengthy period of sobriety and compliance

with all recommended services.

¶ 8 The GAL acknowledges that E.H. "has never harmed [K.W.] and interacts with him in a loving manner" but suggests that she has a "history of violent altercations," including the situation with K.W.'s father at E.H.'s home and an incident in September 2022 in which she "got into an altercation with a man and hit him with a glass bottle, and the man then stabbed [her] in the neck." E.H. points out that the GAL withdrew its motion concerning the June 2021 incident without presenting any evidence concerning the source of its allegations or the nature of her purported involvement. And with respect to the other incident, E.H. told the police that she acted in self-defense, when an intoxicated man snapped and attacked her during a party game. That is the same account she gave when interviewed about the incident for a Request for Clinical Information (RCI) in early 2023. The scant record involving these incidents does not establish a history of violence implicating K.W.'s safety while in his mother's care, and the court was preparing to allow K.W. to return home in late 2023, well after both incidents occurred.

¶ 9 C. The Minor's Sense of Attachment and Clear Preference In This Matter

¶ 10 We also agree with E.H. that the circuit court failed to appreciate her son's sense of attachment to her and his expressed preference to living with her and not his grandmother, facts central to several of the listed best-interest factors.

¶ 11 The circuit court stated that E.H. "never got to the point where she had unsupervised visits for a consistent period of time with her son, which would allow for the Court to reunify her with her son." That misstatement of the evidence reflects, in our view, the court's failure to understand and appreciate the nature of the bond between E.H. and K.W., as well as the history of the case. Statements made on the record by both the GAL and the ASA suggest that K.W. was spending four to six nights a week with E.H., unsupervised. E.H. also reported to her doctor on March 6,

2024, that her son had "been with her 4 days per week for 6 months." A review of the visitation orders reflects that, with the exception of a short interruption in 2021, E.H. was permitted unsupervised visitation with K.W., including unsupervised overnight visits, for approximately three years.

¶ 12 There was testimony from Ms. Knight that K.W. had said that he wanted to live with E.H. The court never mentioned this. The GAL questions whether K.W. in fact expressed a clear preference for living with E.H. when he told Ms. Knight that he wanted to live "with Mommy," pointing out that he called A.S. "Mommy" and E.H. "Mommy Ebby." But Ms. Knight clearly testified that he answered "with Mommy" after she asked him whether he wanted to live with his mother or his grandmother. And that was far from the only documented instance of K.W. expressing a preference for remaining with E.H. and a reluctance to return to his foster placement. Ms. Knight testified that K.W. frequently did not want to get out of the car to return to A.S.'s home and wrote in her notes: "KW cries or is always sad when the worker brings him back to the caregiver's home."

¶ 13 In short, despite overwhelming odds, E.H. was able to maintain such a strong bond with her son, who was removed from her home as an infant, that his sense of attachment and his preference appeared to be with her. Moreover, the circuit court made a significant factual misstatement about the history of overnight visitation. The best-interest factors that look to the child's attachments and preferences were, in our view, not properly considered by the circuit court.

¶ 14 D. The Foster Parent's Assurances

¶ 15 As noted above, a key component of guardianship is that parental rights remain intact and the parent has an ongoing right to be a significant part of their child's life. As courts have noted, this situation can give the child the " best of both worlds." (Internal quotation marks omitted.)

Kam. B., 2024 IL App (1st) 240599, ¶ 44. That of course depends on the actions of the guardian. E.H. argues the circuit court's best-interest analysis improperly downplayed the documented friction between E.H. and A.S. and A.S.'s attempts to sabotage reunification efforts in this case. E.H. argues those efforts were witnessed firsthand by the caseworker with the most knowledge of this case and reported by E.H. to her therapist and other service providers.

¶ 16 The GAL insists that E.H. has waived this argument because, just after the court issued its ruling, her counsel stated: "I appreciate the Court's acknowledgement of the fact that the relationship with the mother is paramount, and I also greatly appreciate [A.S.]'s agreement on that as well." The GAL insists that this should legally bar E.H. from questioning whether A.S. will facilitate a relationship between E.H. and her son. The cases the GAL relies on, *In re Mathias H.*, 2019 IL App (1st) 182250, ¶¶ 49-51 (J. Hyman, dissenting), and *People v. Denson*, 2014 IL 116231, ¶ 17, involved substantive reversals of legal positions. Here, the public defender, in what appears to have been a simple attempt at civility, made the benign statement the GAL now seizes upon. This was in no sense a forfeiture of the very significant concern that E.H. raises on appeal.

¶ 17 When issuing its ruling, the circuit court agreed that it was "paramount" for K.W. to continue to maintain a relationship with E.H. Although the court was aware that there had been "friction" between E.H. and A.S., A.S. had repeatedly assured the court that she would facilitate a relationship between E.H. and K.W. The judge seemed to acknowledge that there might be some future difficulties but viewed them as affecting only E.H.'s interest in seeing her son, a concern that could not override what was in K.W.'s best interest. But the statutory factors, which, as noted above, direct the court to consider K.W.'s identity, his background and ties, his sense of attachment and where he feels love, his sense of familiarity and continuity, and his desire to maintain connections with parents, siblings, and other relatives, make clear that maintaining a strong

relationship with E.H. was in his best interest too.

¶ 18 Aside from vague assertions that she would work to ensure reasonable visitation, the only thing A.S. agreed to under oath at the guardianship hearing was that E.H. would "be allowed to visit [K.W.] at least one time per month either supervised or unsupervised at [A.S.'s] discretion." Ms. Knight, however, who was with this family for two years, testified that A.S. had a history of "manipulat[ing] things," and "disrupt[ing] visits" between E.H. and K.W., a concern that Ms. Knight and her supervisor, Mr. Thomas, had discussed with A.S. on five or six occasions. A.S. admitted to offering E.H. alcohol, though she knew E.H. was trying to maintain her sobriety—something the court acknowledged when it addressed E.H. at the permanency hearing—and Ms. Knight believed A.S. was not only trying to sabotage E.H.'s efforts but to get Ms. Knight herself removed from the case.

¶ 19 Documentary evidence corroborates Ms. Knight's testimony. The January 2023 Clinic Report concluded by stating:

> "If the goal is changed to Guardianship or TPR [(termination of parental rights)], [K.W.] may not have access to [E.H.] and grow up without knowing his mother, who seems to love him very much and consistently behaves appropriately toward him. [K.W.] would likely experience some degree of emotional pain if he were to be separated from his mother indefinitely. Moreover, there seems to be some chronic conflict and interpersonal tension between the foster mother and [E.H.], and TPR or Guardianship would increase the risk of [K.W.] being kept away from his mother."

The Clinic report also noted that "the foster home [wa]s not without its own risks," including the risk that K.W. would be exposed to his father, a reportedly violent individual. Ms. Brown, E.H.'s therapist, also noted in late 2022 and early 2023 that there were "reports that the son's caregiver

[wa]s not cooperating with the unsupervised visitation." In mid-2023 she noted "[E.H.] continues to address problems with her son's caregiver's lack of cooperation with visitation plans."

¶ 20 E.H. clearly reported the difficulties she was having with A.S. to multiple individuals. Ms. Knight, who witnessed those difficulties firsthand, found them concerning enough to involve her supervisor on multiple occasions. It was against the manifest weight of the evidence, therefore, for the circuit court to conclude, based only on A.S.'s vague assurances, that K.W. would continue to enjoy a meaningful relationship with his mother if this case was closed to guardianship. As the Clinic Report warned the court, the diminishment or loss of that relationship is clearly not in K.W.'s best interest.

¶ 21 E. The Desire for Permanency

¶ 22 The most important best-interest factor, in the circuit court's view, appears to have been K.W.'s need for permanency. That is surely an important factor for a young child. However, in this case there were years of significant movement towards return home as a permanent and positive end to this case. In July of 2023, the goal was return home within five months, which generally means that a return home is imminent. The case was set for a return home motion in March 2024, which may well have been granted but for the positive urine test in January. From the outset of the case, E.H. had been consistent with visitation and services and everyone agreed that she was making significant progress towards a return home goal. Where consistent and meaningful visitation has resulted in a strong bond between the minor and his parent, and where a return home was once and could again be imminent, the need for permanency in and of itself cannot be the trump card that it was in this case.

¶ 23 F. Caselaw

¶ 24 Although we have noted before that "[c]hild protection cases are notoriously *sui generis*," (*In re D.F.*, 2024 IL App (1st) 241566, ¶ 39), the parties direct our attention to several cases they argue are helpful in deciding this appeal. We have reviewed those cases and find that they fully support our view that the circuit court's closure of this case to private guardianship must be reversed.

¶ 25 The GAL relies heavily on this court's recent decision in *Kam B.*, 2024 IL App (1st) 240599. The mother in that case suffered from untreated bipolar disorder and schizophrenia that affected her ability to parent (*id.* ¶¶ 3-9), but she made significant progress toward addressing and controlling those conditions, for which the circuit court commended her (*id.* ¶ 58). She was regularly seeing a psychiatrist, attending therapy, and taking her prescribed medications. *Id.* ¶¶ 41-43. The mother was also clearly bonded to her four children, and they loved her and wanted her in their lives. *Id.* ¶¶ 27, 63. The court nevertheless concluded that it was in the minors' best interests to close the case to private guardianship, a decision that we affirmed on appeal. *Id.* ¶¶ 66-67. *Kam B.* stands for the proposition that a parent's progress in services alone does not compel a finding that closure of the case to guardianship was against the manifest weight of the evidence.

¶ 26 The facts driving the best-interest determination in *Kam B.* stand in such contrast to those present here, however, that in our view the case is more helpful to E.H.'s position than as support for the circuit court's order in this case. The minors in *Kam B.*, were seriously affected by their mother's repeated mental health relapses and hospitalizations, having been removed from her care three times within seven years. *Id.* ¶¶ 7, 55. Though they loved her and wanted her in their lives, they also unequivocally indicated that they wished to continue living with their foster parent. *Id.* ¶¶ 13, 18. There was no history of tensions between the mother and the foster parent, a

nonrelative who had experience caring for children with special needs (two of the minors in that case had special needs), and indeed the foster parent encouraged communications with the mother, maintaining a separate phone specifically for the minors to call and text with her. *Id.* ¶¶ 40, 56. Finally, although the mother had attended all scheduled visits, she had never been permitted unsupervised visitation. *Id.* ¶ 59.

¶ 27 The GAL also directs our attention to the unpublished order affirming the closure of a child protection case to private guardianship in *In re K.G.*, 2021 IL App (1st) 201105-U. That case was also pending for years and, although the mother had completed many services and desired a relationship with her children, was not yet ready for them to return home. *Id.* ¶¶ 2, 69. A closer look at the specifics of that case, however, again shows that it bears no real semblance to this one. There was significant evidence, for example, that the six minors in *K.G.* wanted to continue living with their foster parent. *Id.* ¶ 76. And although we commended the mother for "her many successes" and commitment to her children, she clearly had a long way to go before her children could be returned to her. *Id.* ¶ 79. DCFS had suspended unsupervised visitation just two months after the court allowed it, based on concerns that she was struggling to take care of so many children on her own for even a short period of time (*id.* ¶ 17), and a psychologist who interviewed her was concerned that she was still not taking her medication; not being forthcoming about her mental conditions; blaming others for her poor relationship with her children; and generally failing to take responsibility for her actions (*id.* ¶¶ 19-20). In his opinion, the likelihood that she would make the gains necessary to accomplish reunification with her children was low. *Id.* ¶ 22.

¶ 28 E.H., for her part, relies on two cases, *In re Desiree O.*, 381 Ill. App. 3d 854 (2008), and *M.M.*, 337 Ill. App. 3d 764 (2003), which she argues represent two ends of a spectrum, the former an example of when private guardianship is not in a minor's best interest and the latter an example

of when it clearly is. We agree with E.H. that those two cases provide some guidance as to how the best-interest factors should be assessed when a court considers the closure of a case to private guardianship.

¶ 29 The minor in *Desiree O.* was hospitalized for injuries consistent with shaken baby syndrome. *Id.* at 856. The minor's father was convicted of aggravated battery after confessing to the incident. *Id.* The mother, who was home when the battery occurred but said she did not witness it, completed all recommended reunification services and moved to have the minor returned home. *Id.* at 857. The foster parent intervened, arguing that her experience and resources would allow her to provide the minor, who suffered from developmental delays, with "a higher level of care than she could possibly receive from her mother." *Id.* Following a hearing at which the court heard both from the parties and from the caseworkers and medical professionals involved, the court granted the mother's motion. *Id.* at 857-61. The court acknowledged the foster parent's "exemplary work in caring and advocating for [the minor]," but noted "that the Act directed the court to act in a just and speedy manner to reunite families when it was in the best interest of the minor and [the minor] could be cared for at home without endangering her health or safety." *Id.* at 860.

¶ 30 On appeal, the foster mother argued the circuit court had improperly considered the goal of reunification with the minor's natural parent when the sole criterion guiding its placement decision should have been the minor's best interest. *Id.* at 864. We rejected that argument, and the whole notion "that the best interest determination consideration meant comparing caretaker skills to determine which person more closely met some ideal standard." *Id.*at 866-67. The circuit court had not improperly accorded weight to the mother's interest in regaining custody of her daughter but simply acknowledged that reunification with her natural mother was in fact in the minor's best interest. *Id.* at 867.

¶ 31 The GAL makes little effort to distinguish *Desiree O.*, other than to point out the different procedural posture in that case. The critical takeaway from *Desiree O.*, however, is that "the general goal of reunification stated throughout the Act" is not an inherently separate consideration from the child's best interest where parental rights have not been terminated. *Id.* at 865. Here, as in *Desiree O.*, a bond exists with the natural parent, and the parent has made significant progress toward addressing the concerns that led to the minor's removal. In such cases, permanently placing the child in someone else's care generally will *not* be in the minor's best interest, even if, all things being equal, that person could provide the minor with an objectively "better life." That is because in such cases all things are *not* equal; reunification with the child's natural parent is possible, and the Act assigns great value to the realization of that goal, not just to the parent, but to the child.

¶ 32 *M.M.*, 337 Ill. App. 3d 764 (2003), also cited by E.H., is indeed a case lying at the other end of the spectrum from both *Desiree O.* and from this case. The minors in that case were taken into care because their parents had left them alone for long periods of time and failed to meet their basic needs. *Id.* at 767. Although parental rights were not terminated, the parents had made inconsistent progress and ultimately failed to secure stable housing or otherwise resolve the issues that had led to DCFS involvement. *Id.* at 768. The circuit court, noting both that the minors had unequivocally stated that they wished to remain with their foster parents and that the "continued uncertainty was devastating to [them]," closed the case to guardianship. *Id.* at 779. We affirmed, noting that guardianship was not considered until it was clear that "the effort at return home failed." *Id.* at 780.

¶ 33 There has been no similar failure in this case. Since the case began, E.H. has fully engaged in services and enthusiastically forged a bond with her son, who expressed a preference for being in her care. Although a single positive urine test would never be sufficient grounds to find E.H. an

unfit parent, it was essentially used here to move this case away from closure with a return home to closure with guardianship. The circuit court's finding that this was in K.W.'s best interest was against the manifest weight of the evidence.

¶ 34 E.H. asks us not only to reverse the circuit court's order closing the case to private guardianship, but to direct the court on remand to close the case with a final judgment returning K.W. home to E.H. The appellees, having argued only that we should affirm the judgment of the circuit court, do not address this argument. We will leave the final resolution of this case to the circuit court.

¶ 35 IV. CONCLUSION

¶ 36 For all of the above reasons, we reverse the circuit court's order closing this case to private guardianship. We remand for the court to reopen the case and to expeditiously set it for a permanency hearing to reconsider the appropriate goal in light of this opinion, a hearing at which E.H. may, if appropriate, file a motion for return home.

¶ 37 In order to expedite final resolution of this case, we hereby shorten the time to file any petition for rehearing to 10 days and direct the Clerk's Office to issue the mandate immediately thereafter if no petition is filed.

¶ 38 Reversed and remanded with directions.

***In re K.W.*, 2026 IL App (1st) 251913**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 19-JA-01584; the Hon. Lisa M. Taylor, Judge presiding.
Attorneys for Appellant:	Rachel E. Migliore, of Chicago Advocate Legal, NFP, for appellant.
Attorneys for Appellee:	Eileen O'Neill Burke, State's Attorney of Cook County, of Chicago (John E. Nowak, Gina DiVito, and Marina C. Para, Assistant State's Attorneys), for the People. Kwame Raoul, Illinois Attorney General (Leigh J. Jahing, Assistant Attorney General), and Jane Elinor Notz, Illinois Solicitor General, for the Illinois Department of Children and Family Services. Charles P. Golbert, Kass A. Plain, and Chirstopher J. Williams, of the Office of the Cook County Public Guardian, of Chicago, for the minor-appellee.