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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> PARENTAGE OF K.E.B.,)	Appeal from the Circuit Court
)	of Kane County.
)	
)	No. 11-F-429
)	
)	Honorable
(Thomas E.B., Petitioner-Appellee, v.)	Robert J. Morrow,
Christine C., Respondent-Appellant).)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in making certain factual findings and awarding the petitioner-father residential custody of his and respondent-mother's son. However, it abused its discretion in imposing visitation restrictions on respondent-mother without making the requisite endangerment findings. Affirmed in part and reversed in part; cause remanded.

¶ 2 Following a bench trial, the trial court awarded residential custody of K.E.B. to petitioner, Thomas E.B. Respondent, Christine C., appeals, arguing that: (1) some of the court's findings were against the manifest weight of the evidence; (2) the custody award constitutes an abuse of discretion; and (3) the visitation award was erroneous. We affirm in part, reverse in part, and remand the cause.

¶ 3 I. BACKGROUND

¶ 4 Christine, age 34, and Thomas, age 27, met in April 2009, and K.E.B., the focus of the instant appeal, was born on May 7, 2010. Christine had two children from a prior relationship—Sidney (age 14) and Brendan (age 7)—with Dennis Schultz. Schultz had primary residential custody of the children, and Christine had visitation with them every other weekend.

¶ 5 On July 5, 2011, Thomas petitioned to establish parentage, custody, and child support under the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2010)). He requested joint legal custody of K.E.B. and further requested that residential custody, visitation rights, and child support be reserved because the parties resided together as a couple.

¶ 6 On January 10, 2012, Thomas filed an amended petition to establish parentage, custody, and child support, seeking, *inter alia*, sole legal custody of K.E.B. He alleged that Christine’s ability to parent was severely compromised due to her chronic alcoholism and erratic behavior. The following day, the trial court appointed Susan Lonergan as the guardian *ad litem* (GAL).

¶ 7 A. Christine’s Testimony

¶ 8 Trial commenced on September 18, 2012. Christine testified that she was in a relationship with Thomas from 2009 to 2011 and that, during this time, they were engaged to be married. K.E.B. was born on May 7, 2010. She testified that she has not drunk in excess since 2007, when she was arrested and charged with DUI and subsequently had her driver’s license revoked for three years. Christine underwent alcohol counseling and performed community service; she obtained her driver’s license again on December 8, 2011.

¶ 9 On May 7, 2011, at K.E.B.’s first birthday party, Christine consumed alcohol. She denied being intoxicated, but she did vomit twice. Christine explained that she vomited because she did a “keg stand” (*i.e.*, drank beer from the beer keg while doing a handstand on it) for the first time at that

party. Several other guests also did a keg stand, including Thomas. Thomas and his father brought the keg to the party.

¶ 10 On May 9, 2011, Christine went to Wisconsin with Thomas, his father, John, and a friend. There, (contrary to her earlier testimony) she consumed alcohol to excess.

¶ 11 On June 6, 2011, Christine and Thomas had a disagreement. She initially denied that, while Thomas was holding K.E.B., she hit Thomas in the face and denied that she was intoxicated that day, but she conceded that she consumed two beers. According to Christine, Thomas pushed her in the chest and grabbed her arm, which left bruises. He also spit in her face, which prompted her to strike him. The Department of Children and Family Services (DCFS) investigated the incident, which resulted in an indicated finding against Christine, but not against Thomas. Christine was required to undergo alcohol and substance abuse counseling. During the DCFS investigation, there was a safety plan in place that required that neither parent have any unsupervised contact with K.E.B. Christine moved out of Thomas's home in July 2011.

¶ 12 On January 8, 2012, Christine drove to Thomas's house to pick up K.E.B. at the end of Thomas's parenting time. (Her vehicle had North Carolina license plates.) Christine arrived at Thomas's house at about 7:50 p.m. Christine took K.E.B. to her car and buckled him in the back car seat, but not in a child safety seat. She denied that she was intoxicated at this time or that she was going to drive away with K.E.B. in the back seat. (Christine testified that she had been at a friend's house earlier, where others were consuming alcohol and, at one point, alcohol was spilled on her; thus, she smelled of alcohol; she did not consume alcohol.) Christine further explained that the couple shared a child safety seat and that Thomas would not give her the seat; thus, she buckled in K.E.B. so he would be safe while she retrieved the child seat from the garage. The couple argued.

Thomas accused her of drinking, and he tried to take K.E.B. out of the car. Christine tried to stop him. Thomas grabbed her wrist, throwing her down, and taking her keys. He then retrieved K.E.B., threw Christine's car keys (which she had placed on the passenger seat, not in the ignition) onto the garage roof, and went inside the house. Christine testified that she took a step ladder, climbed onto the roof, and retrieved the keys. When she started to climb down, Thomas removed the ladder from under her. She hung from the roof and then jumped down. In the meantime, Thomas had called the police. They arrived as she fell off of the roof. Christine testified that she fractured her ankle. She told the police that she wanted to make a statement, but the officer told her that he did not care; he also stated that she smelled of alcohol. The incident resulted in her arrest, but police did not ask her to take a Breathalyzer test or conduct any field sobriety tests. Christine was taken to the police department and then the emergency room, where personnel applied a splint to her leg and gave her painkillers. Christine used crutches for the next six weeks.

¶ 13 In mid-February 2012, Christine was in Mike and Denise's Bar. That day, she had given blood in preparation for endometriosis surgery. Christine had to fast before the draws. After the draws, she went to the bar to eat; she did not consume alcohol. Also that day, at 4:30 p.m., she met Thomas at a Walgreens drug store to pick up K.E.B. She had asked him on the phone if he could keep the child later due to her draws. Thomas, according to Christine, agreed only if she texted him the request. She sent him three text messages, but also went to Walgreens at the originally-scheduled time because she feared that Thomas would contact the police if she did not come to pick up the child. When she arrived, she approached Thomas (who stated that he had just received her text message) and asked him to roll down his window so that she could greet K.E.B. Thomas then

accused her of consuming alcohol. Christine explained that, if she had been consuming alcohol, the blood draws would have been impacted; however, they came back okay for the surgery.

¶ 14 In February 29, 2012, Christine and K.E.B. went to Chuck E. Cheese's. She denied drinking beer there. She also denied that, on August 23, 2012, she was at the Thirsty Fox bar. Christine explained that she was next door at an Italian restaurant with a date. She scheduled an early dinner at the restaurant because she had arranged to pick up K.E.B. from Thomas at 8 p.m. She denied consuming alcohol during that date. Christine testified that she completed her pickup of K.E.B. that evening and that Thomas did not complain that she smelled of alcohol. Christine denied going inside the Buffalo Wild Wings bar on September 28, 2012, but agreed that she was there to pick up Sidney, her 14-year-old daughter, who was out with a friend that day.

¶ 15 Christine further testified that, on May 29, 2012, she underwent court-ordered hair follicle and urine tests. The urine test was positive for alcohol and the hair sample was not sufficient to test. On June 7, 2012, she submitted another hair sample, and it tested positive for cocaine. She denied that she had consumed alcohol within 90 hours before the May test or consumed cocaine within 90 days before the June test. Christine further testified that she had been consuming hydrocodone in June 2012, when the hair follicle testing was done, but that the results were negative for opiates.

¶ 16 Addressing September 7, 2012, Christine testified that all three of her children were in her care that day and that she went to pick up Sidney and Brendan; Sidney's friend, Kelly, was also with them. At 4:30 p.m. that day, Christine had picked up her other children and Kelly, went to Thomas's house, the bank, and then went home. They arrived at 7 p.m. Christine cooked dinner and, at about 8:30 or 9 p.m., agreed to go out to pick up a movie for the girls, who would watch Brendan and K.E.B. She returned at 9:30 or 9:45 p.m. and put the boys to sleep. Christine watched the movie

with the girls, starting at 11 p.m. Christine had taken Benadryl for allergies and fell asleep on the couch; the medication makes her drowsy. The girls took a video of Christine while she slept and showed it to her the next morning. They all laughed about it. Christine identified photographs of alcohol at her home that day, explaining that friends had brought the alcohol. She denied being intoxicated that night and denied passing out that day. Christine further denied that Sidney, Brendan, and Kelly tried to wake her, but were unable to do so.

¶ 17 Christine denied driving past Thomas's house three times on September 15, 2012, though she conceded that it was possible that she did so because he lives on Randall Road, which is a major thoroughfare and she shops at various stores on the street. Christine acknowledged calling Thomas eight times that day, explaining that she wanted to speak to K.E.B. and that Thomas would not answer the phone.

¶ 18 During Thomas's recovery from burns he sustained at work in August 2009, Christine took care of him. She denied that she consumed any of his pain medication during this time and denied that she has ever taken any of his medication.

¶ 19 On June 6, 2011, Thomas, John Bowker, and Thomas's brother Andy were at the house to remove Thomas's guns. They threatened Christine and called her names. She felt intimidated.

¶ 20 During the year of DCFS's involvement following this incident, Christine never submitted a sample that resulted in a "dirty" drug or alcohol test. She consumed prescription drugs at this time: in early December 2011, she was prescribed Ultram, Vicodin and acetaminophen with codeine for her endometriosis. She also took an antibiotic and pain killer for an ear infection. In February and March 2012, Christine underwent a laparoscopy and took antibiotics and pain medication; she also underwent general anesthesia. She also had a tooth abscess. Christine denied taking any recreational

drugs at this time. Christine wore an alcohol detection bracelet for three weeks, but it was removed pursuant to a doctor's order after she developed contact dermatitis. During the time she wore it, it never alerted positive for alcohol consumption. Christine denied that she ever hid alcohol bottles in a laundry basket.

¶ 21 Recently, Christine moved into a townhouse in Elgin. It has three bedrooms, one of which is K.E.B.'s. In October 2012, she started working at Home Depot. She works from 6:30 a.m. to 3 p.m., Monday through Friday. K.E.B. is in daycare when Christine is at work. He loves it there. Christine has notified Thomas of the daycare arrangement, but she enrolled their son without asking Thomas about it first. He has not tried to contact the facility. Christine asked Thomas if he would contribute to the payments, and he said that he would not because she did not ask him about the placement.

¶ 22 K.E.B. is current on his immunizations and had a good two-year checkup. Christine believes that K.E.B. should have a relationship with Thomas.

¶ 23 Christine denied that she has ever been intoxicated while K.E.B. has been in her care. She has no plans on having, for example, a glass of wine when K.E.B. is in her care. She does have concerns about Thomas's drinking. In March 2011, Thomas was drinking at Buffalo Wild Wings on Randall Road in Aurora. There, Christine observed that Thomas was loud, aggressive, and "stormed off" and left Christine there. He then went home to try to take care of K.E.B. She drank that day, too. Christine was upset with Thomas because she had asked him to take care of K.E.B. so that she could go to a makeup artist to have her makeup done for their upcoming wedding. He refused, stating that he wanted to take out his friend Brandon. Christine later took K.E.B. Christine also saw Thomas intoxicated at K.E.B.'s first birthday party.

¶ 24

B. Sidney Schultz

¶ 25 Sidney Schultz, age 14, testified that Christine is her mother and Dennis Schultz is her father. On September 7, 2012, Sidney and her friend fell asleep on the couch while watching a movie. Christine woke them up. Identifying photographs she took that evening, Sidney testified that they depicted beer and wine. She sent the photos to Dennis. Sidney further testified that Christine's words were slurred that evening and her eyes were "very heavy, almost squinting, rolled back into her head. She was off balance when she tried to walk. She just—you couldn't communicate with her." Sidney did not smell alcohol. Sidney explained that Christine is in this state "[a]lmost every weekend that I'm there." She does not like to be around her mother in that state. Sidney took the photographs, and she and her friend went to her room after Christine woke them up. Two hours later, they came out to get a snack. Christine was asleep on the couch. Sidney tried to wake her, but she would not wake up. Sidney had her friend record a video of Christine and forwarded it to Dennis. Sidney is not aware that her mother suffers from allergies, and Christine did not tell her that she took medication for allergies that evening. Sidney explained that she did not observe Christine consume any alcohol that evening, but the wine containers depicted in the photos were gone. Also, a bottle of vodka, which Sidney did not photograph and which was present when she arrived at Christine's house, was gone later that night.

¶ 26 Sidney further testified that she lives with Dennis and that Dennis and Christine do not get along. There is an ongoing dispute that has involved the GAL. Sidney sometimes argues with her parents. She is supposed to live with her mother every other weekend, but in the past, she has not done so. There was a five-month period during which Sidney chose not to have any parenting time with Christine.

¶ 27

C. David Chambers

¶ 28 David Chambers, Christine's father, testified that he and Sandra Chambers, Christine's mother, have been married for 36 years and live in North Carolina. David works as an assistant district attorney and has visited Christine a couple of times since she separated from Thomas. Christine and K.E.B.'s relationship, in his view, is loving and excellent and Christine takes good care of her son. Sidney and Brendan also have a good relationship with K.E.B.

¶ 29 On January 8, 2012, at 8 or 9 p.m., Christine called her parents and was upset. She did not sound intoxicated. She related to them the incident with the child safety seat at Thomas's house. Christine complained that she had injured her ankle and that Thomas had thrown her to the ground.

¶ 30 In August 2009, David received a call from Thomas, who told him that he was on medication and was kicking Christine out of the house. Christine told her father that Thomas "went berserk" when she asked him why he had not eaten his lunch that day. Thomas and Christine told David that Thomas threw out Christine's clothes and urinated on them. Thomas made a similar call to David on June 6, 2011. During this call, Thomas told David that he and Christine were breaking up and to "come and get her shit." He also stated that he had called the police. David advised him to stop calling the police and to enroll in couples counseling. Thomas mentioned that Christine had hit him. Later, Christine told David that she had hit Thomas because he spit in her face.

¶ 31 In late May 2012, David and his wife visited Christine for one week. During their stay, he did not observe alcohol in the residence, nor observe Christine consume any alcohol or cocaine.

¶ 32

D. Nancy Myard

¶ 33 Nancy Myard testified that she owns AMS Data, a random drug testing company that conducted drug tests in this case in 2012. AMS works only on court-ordered projects. Addressing

her company's procedures, Myard explained that, at the collection site, an individual must show identification. The site must follow a standard protocol for drug-free workplace standards, which means following the same paperwork, chain of custody/evidence from the site to the laboratory and then to Myard for distribution to the attorneys, judges, or others.

¶ 34 Addressing Christine's testing, Myard testified that Christine appeared at the collection site on May 30, 2012, and provided urine and hair samples, which were forwarded to different laboratories. Myard identified reports generated for Christine's tests. The first hair sample was rejected as containing an insufficient amount of hair. The urine test conducted on Christine's sample tested for the presence of drinking alcohol as far back as 90 hours. Christine's sample tested positive for drinking alcohol. A second hair sample, collected on June 7, 2012, tested positive for cocaine. The test conducted on the hair sample, according to Myard, eliminated items, such as poppy seeds, which would give a false positive result.

¶ 35 Myard also reviewed a partial report from a June 7, 2012, urine test conducted by another company. (Christine submitted a urine sample to another company on the same day that she gave the second hair sample to Myard's company.) The test noted that it was negative for cocaine metabolite. Addressing why her test was positive, Myard explained that cocaine stays in urine for 72 hours, but stays in hair for 90 days. She also noted that there is a gap between the time the drug is ingested and the time it makes its way to the hair. Thus, both tests, assuming each was accurate, could be correct. Myard further explained that the reports from the other lab reflected that the sample was substandard in that there was no integrity check on the test to ensure the sample was not adulterated.

¶ 36 Myard further testified that the hair follicle test her company has done uses an expanded opiate panel that does not include cocaine; cocaine is a separate category. If hydrocodone, hydromorphone, or any other opiate were present in the sample, it would have been separately listed on the test results. Thus, her tests account for legitimate prescription drugs.

¶ 37 Addressing her background, Myard testified that she has a degree in education. She noted that she was only reporting the test results, not interpreting them; she is a third-party administrator. Her company's protocol is adapted from United States Department of Transportation guidelines for commercial driver's testing requirements. Her company does not use a medical review officer because the court does not require it; rather, the court "stands as the medical review officer." Myard explained that her protocol does not provide for the use of medical review officers to review positive test results because they do not use "federally regulated certification." When a medical review officer reviews test results, he or she also receives medical information from the person who submitted the sample, such as a list of medications the individual is taking. The officer's purpose is to "affirm or confirm, or deny or reject." Myard further testified that the action of a medical review officer would not affect the accuracy of the test.

¶ 38 E. John Bowker

¶ 39 John Bowker, Thomas's father, testified that he has been married to Patty Bowker for 34 years and lives three blocks away from Thomas in Aurora. John works at Olson Roofing, and his three sons work there too. When Thomas and Christine were still together, John would see K.E.B. every day. He now sees him Tuesdays, Thursdays, and every other weekend. He gets along very well with his grandson. John has a swing set in his back yard and other toys. He also has another

grandchild who is 20 days younger than K.E.B. John intends to retire in 2 1/2 years and would be able to take care of K.E.B. every day.

¶ 40 Describing Thomas's relationship with K.E.B., John stated that he is loving and that they love each other. They play on the swing set and with monster trucks. Thomas feeds his son, buys clothing for him, and attends to all of his needs.

¶ 41 John tries not to use vulgar language in front of K.E.B. He might use it while speaking on the phone for a work call, but he tries to go outside for these calls. His wife, Patty, gets along very well with K.E.B. John further testified that Thomas has recently been diagnosed with depression and takes medication for it. Thomas's condition does not affect the way he cares for K.E.B. When K.E.B.'s parenting time ends with Thomas and he is returned to Christine, he does not want to go.

¶ 42 John further testified that he has observed Christine in a drunken state, including at her son's first birthday party. When she is intoxicated, she slurs her words, gestures with her hands, repeats herself, and is argumentative. John was present on June 6, 2011, the day of the spitting incident. He arrived when the police arrived. Christine slurred her words and was gesturing and staggering. He smelled alcohol on her breath. He also observed her hit Thomas in the head five times while he was holding K.E.B. John saw that Thomas's head had swollen. John returned to the house that evening and removed Thomas's guns from the house; John was concerned that Christine might use one on Thomas. The guns are kept in a gun safe, and Thomas and Christine know the combination.

¶ 43 Addressing a July 7, 2011, incident, John noticed that Christine was argumentative and staggered. John has observed Christine be intoxicated on other occasions, including May 2009 while they were in Wisconsin. She drank all day and wanted to have a drinking contest. She and Thomas argued. "When Christy is not drinking, she's a good lady, a good girl. When she starts drinking, it's

like Jekyll and Hyde. She turns into this vicious young lady.” Christine is a good mother when she is sober.

¶ 44 John conceded that he had a conversation with Saundra Chambers, Christine’s mother, shortly after the June 2011 incident, wherein he told her that he would spend every dime he had to ensure that Christine lost her son. He was worried that she would harm him. John also gave Thomas money while at the Buffalo Wild Wings bar to buy Christine a drink.

¶ 45 F. Thomas

¶ 46 Thomas testified that he lives in Aurora and owns his home. He has worked at Olson Roofing for 10 years. His relationship with Christine began in April 2009 and ended in July or August 2011. K.E.B. is his only child.

¶ 47 On January 8, 2012, K.E.B. was in Thomas’s care. Christine arrived to pick him up at 8 p.m. Thomas waited at the door with his son. As he opened the door, he noticed that K.E.B.’s diaper needed changing. Thomas told Christine that he was going to change the diaper, but she said that she would do it at home. Thomas told her that it would not take long, and they went inside. As Christine walked past Thomas, he smelled the odor of alcohol on her. Christine’s eyes were red, she slurred her speech, and walked “funny.” He took K.E.B. into the kitchen and called 911, at which time Christine took K.E.B. out of Thomas’s arms. She “ran” to her car and put K.E.B. into the back seat and buckled him in; there was no child safety seat in the car (the parties shared a car seat; Christine did not ask for it). While still on the phone, Thomas tried to get to his son, but Christine pushed him away and closed the passenger door. She got into the driver’s seat. Thomas retrieved K.E.B., Christine exited the car. Thomas took the keys out of the ignition (not from the passenger seat, as Christine testified) and threw them on the roof. Christine took a ladder from the garage,

climbed onto the roof, and took her keys. Thomas further testified that he moved the ladder and took K.E.B. inside. He denied pulling the ladder out from under Christine when she was trying to climb down. He also denied grabbing Christine by the arm and throwing her to the ground; he explained that he had K.E.B. in his arms most of the time. Thomas stated that Christine was still on the roof when he went inside. The police arrived as Christine was jumping off of the roof.

¶ 48 Thomas asked the police to charge Christine with DUI and battery. According to Thomas, the police stated that they could not charge DUI because they did not observe Christine's driving. Thomas gave a statement, Christine was charged with domestic battery, and he put his son to sleep. Thomas subsequently attempted to get an order of protection, but his request was denied. (He swore in his verified complaint that Christine did not have a regular means of transportation at her disposal, although he knew that she had been driving her parents' car with North Carolina license plates for one month.)

¶ 49 According to Thomas, the next day, January 9, 2012, K.E.B. was in good shape. At 10 a.m., Thomas laid down K.E.B. with a bottle for his nap and he went to the police to get an order of protection. (His father stayed with K.E.B.) He drove past his parents' house, where he saw the police. Thomas turned his car into the Walgreens parking lot, and the police told him to bring K.E.B. to them (because it was presumably her parenting time with him). Thomas's father brought K.E.B. to the police at 10:30 a.m. Addressing Christine's allegations that K.E.B. was dirty that day, Thomas stated that he woke up his son only five minutes after he put him down to nap and he vomited on himself.

¶ 50 The parties' relationship ended in July or August 2011. Near that time, on June 6, 2011, Thomas had arrived home from work and saw Christine on the phone, drinking a beer, smoking, and

with her back to K.E.B., who was in the back yard. Thomas said hello and went upstairs. He had noticed that Christine's eyes were red, she slurred her speech, and was not paying attention to K.E.B. Thomas came back downstairs and looked around the home for alcohol. (Thomas explained that he and Christine had decided to stop drinking in May or June of 2009; he believed that Christine had a drinking problem. They started drinking alcohol again in the spring of 2011, at which time Christine's problems with alcohol returned.) Thomas found alcohol under Brendan's pillow: a couple of bottles of mixed alcohol and a couple of beers. Brendan was not home, and Thomas confronted Christine. They argued, Thomas picked up K.E.B. after he started crying, and Christine punched Thomas in the eye. Thomas spit in her face. Christine punched him again, he spit in her face again, and then he called 911. After the police arrived the parties filed their complaints and Christine left (someone picked her and K.E.B. up because she did not have a driver's license). Thomas believed that Christine was intoxicated.

¶ 51 DCFS conducted an investigation. They recommended that Thomas participate in a substance abuse evaluation, which was unfounded. DCFS conducted a hearing on Christine based on an indicated finding. The safety plan precluded Thomas and Christine from unsupervised contact with their son. Thomas conceded that he did not mention the June 6, 2011, incident at his deposition in this case.

¶ 52 On July 7, 2011, Christine was at Thomas's house. She was intoxicated. Her eyes were red, she smelled of alcohol, slurred her speech, and repeated herself. Thomas told her to leave and that she could not live there anymore because he kept finding alcohol hidden in the house when he returned home from work. Thomas called the police, alleging another domestic battery. He testified that Christine hit him with a folded up rug. He had found two bottles of alcohol hidden in a laundry

basket. The police did not arrest Christine. He conceded that he did not mention this incident at his deposition.

¶ 53 Addressing his parenting time with K.E.B. while he and Christine were still together, Thomas testified that he spent about 8 to 10 hours per day with his son. He changed his diaper, fed him, and put him to sleep. He also read to him and sang to him. Christine spent time with K.E.B. while Thomas was at work, which was about 8 to 10 hours per day. Both parents took K.E.B. to doctor visits; Christine seldom took K.E.B. alone to the doctor because she did not have a driver's license. K.E.B. has his own room in Thomas's house. In the backyard, there is a playset, power wheels, basketball hoop, and other toys. There is also a daycare center across the street. Thomas has signed up for parenting classes, as recommended by the GAL. Thomas described K.E.B. as developmentally "above average." He has very advanced verbal skills. K.E.B. has never had a serious illness or injury. Currently, K.E.B. spends 95% of his time with Christine. Thomas has never observed in his son's behavior anything that would indicate that Christine is not a good mother. However, K.E.B. is very happy when he is with Thomas, and Thomas does not believe K.E.B. will be distraught with a change in custody to him. Thomas was unaware if K.E.B. is current on his immunizations. Currently, Christine does not inform him of their son's doctor's appointments, and Thomas does not ask her.

¶ 54 On August 3, 2011, after the parties had separated, Thomas was declared K.E.B.'s father and a child support obligation was imposed. Thomas testified that he has paid his support. He has parenting time with his son on Tuesdays and Thursdays (from 4 to 8 p.m.) and every other weekend. During his parenting time, Thomas plays with his son, takes him to the zoo, airports, train stations, and water parks. He reads to him, feeds him, and they watch television together. K.E.B. is a "great

kid.” When he misbehaves, Thomas tells him no and has him apologize; he sometimes uses time outs. He never uses corporal punishment. Thomas’s parents live three blocks away from Thomas, and Thomas’s father sees K.E.B. every time Thomas parents him. K.E.B. sees his grandparents every week for family gatherings. Thomas’s girlfriend, Andrea, has two boys, who are three and five years old. They are great friends with K.E.B.

¶ 55 Addressing his work hours, Thomas testified that he leaves for work at 4 a.m. and returns between 4 and 4:30 p.m. If he is awarded residential custody, Thomas’s mother, who works for the Kane County forest preserve police, would switch to the night shift (working from 2 to 10 p.m. or 3 to 11 p.m.) and help with K.E.B.’s care. Thomas explained that his mother would sleep at his house when she got off of work and wake up with K.E.B. and spend the day with him. Then, when Thomas’s father gets off of work, he would spend an hour with K.E.B. until Thomas got home. He conceded that his mother also cares for his niece, Arizona, full time. Also, there is a daycare center across from Thomas’s house and he has friends and family to help him. His brother, Andy, can babysit. At one point, Andy lived with Thomas, but Thomas kicked him out of the house because he was smoking “pot.” He has had a couple of DUI’s, but now has a driver’s license and is getting his life on track; he is a good babysitter. Before K.E.B. was born, Thomas took a “daddy boot camp” class; subsequently, he attended the KIDS program at the circuit court.

¶ 56 Thomas further testified that, if he were awarded residential custody, he would work to foster a good relationship between K.E.B. and Christine. He would allow Christine to speak to K.E.B. every night; he will pay child support on time; he will be open to exchanges on certain days; and he will try to be civil with Christine. Addressing Christine’s efforts at fostering a good relationship, Thomas testified that she sometimes tries to do so: she will try to get K.E.B. to speak to Thomas on

the phone and will allow Thomas to have parenting time outside of his regular schedule. However, Christine also drives by Thomas's house numerous times in a day; calls often; calls Thomas's girlfriend various names; and sometimes denies Thomas the opportunity to speak to K.E.B. on the phone. Also, there was an occasion in May 2012 when Thomas asked to take K.E.B. to the Wisconsin Dells during his parenting time; however, Christine said no. According to Thomas, Christine is not always present for drop-offs and pick-ups. Once, she said her friend, Liz, would pick up K.E.B. Thomas told Christine that he would not drop off his son with her friend, whom he does not like. He told Christine that the police told him he did not have to leave his son with her friend. Christine then met Thomas at a Walgreens and took K.E.B.

¶ 57 In mid-February 2012, a pick-up was arranged at Walgreens. Before that time, Christine called Thomas, asking if he could watch K.E.B. until 6 p.m. because she had a doctor's appointment. He said he would do so, but asked her to send her request via a text message (because he did not want the police to question why he did not show up for the 4 p.m. drop-off). Thomas did not receive a text message and, so, he went to Walgreens at 4 p.m. Christine arrived shortly thereafter in her car, at which time he also received her text messages. He told her he would keep their son until 6 p.m. At this point, Christine asked to give K.E.B. a kiss. When she leaned into the car, Thomas smelled the odor of alcohol on her breath. He called the police.

¶ 58 Addressing September 8, 2012, Thomas testified that he was in the vicinity of the Buffalo Wild Wings bar and restaurant, going to the bank next door. He saw Christine coming out of the bar and restaurant. Since 2007, Thomas has witnessed Christine drink to excess "numerous times." Once, in 2009, during a trip to Wisconsin, she drank to excess. Thomas was present, as was his father. Christine challenged everyone to a "chugging contest." She became intoxicated and

threatened to walk home from Kickapoo, Wisconsin. She started walking home, and Thomas picked her up in his truck. She had red, glassy eyes, slurred her speech, repeated herself, and was “very obnoxious.”

¶ 59 Thomas stated that he had a heart attack in July 2012. He has high cholesterol. He is now on medication for it and has changed his diet and started a smoking cessation program (one week before he testified). In January 2012, he was diagnosed with depression and prescribed Wellbutrin and Abilify (an anti-depressant and a booster). He has felt very well since he started taking the medication; he does not take Abilify anymore because he does not need it. His condition has not affected his ability to care for K.E.B., his work, or daily life. Thomas feels like he is “back to normal.” Thomas also takes Adderall for ADHD; he is aware that it is contraindicated for cocaine, but his doctor is not concerned about it because he has not used cocaine for seven or eight years.

¶ 60 In 2007, Thomas had a problem with cocaine and checked himself into SHARE, a 35-day in-patient rehabilitation program. He has not taken cocaine since that time. Also in 2007, he was charged with DUI. He has not been charged with DUI since that time or driven in an intoxicated state. Thomas has a commercial driver’s license, Class A, hazmat. He drives asphalt tankers for his job. He has to take random drug and alcohol tests to keep his license. (His DUI limit is .02 instead of .08.) The court ordered Thomas to take a drug test. He testified that he called the testing facility, but got no answer. He went to the address on the order, but the door was locked. He eventually located the new address for the testing facility, and he took a drug test two days later and paid his share of the fee. As of the date of his testimony (September 19, 2012) he had not received any results.

¶ 61 In August 2009, Thomas was burned at work and was prescribed Norco, hydrocodone, and morphine. The medications went missing. No one other than Thomas and Christine had access to the medicine. According to Thomas, Christine has used cocaine. Although he never observed her do so, she told him about her use.

¶ 62 On cross-examination, Thomas testified that he still drinks alcohol, but denied that he was ever diagnosed with alcoholism or that he has been intoxicated since K.E.B. was born. In 2006, when he was charged with DUI, he was also charged with fleeing and eluding the police, which was subsequently pleaded down. He conceded that the alcohol containers found under Brendan's pillow were sealed.

¶ 63 Thomas explained that he re-introduced alcohol into the house on his and Christine's two-year anniversary. Christine "seemed okay with it." On subsequent occasions, they consumed alcohol and "everything seemed fine." However, in June or July 2011, he returned from work to find Christine intoxicated and bottles of alcohol hidden in the home. "She started hitting me, swearing at me, very violent with me." When asked to point to incidents where Christine's actions put K.E.B. in any danger, Thomas noted June 2011 (when she punched him in the face while he was holding the child) and January 8, 2012, the child seat incident.

¶ 64 Thomas and Christine unsuccessfully attempted to reconcile in October and November 2011. Thomas further testified that he started dating his current girlfriend in December 2011. She spends a lot of time in his home and sleeps there, as do her two children.

¶ 65 G. Officer Derrick Height

¶ 66 Officer Derrick Height works for the Aurora police department. He testified that, on January 8, 2012, he responded to a call at Thomas's house. When he arrived, Height saw Christine mid-air,

coming down from the garage roof to the driveway. He approached her, and she appeared to be intoxicated. Christine's speech was "very slurred," she had red, glassy eyes, and stumbled (although he conceded that stumbling is consistent with a broken ankle and red eyes would be consistent with crying from an injury). Also, Height smelled alcohol on Christine's breath; he was clear that it was coming from her breath and not from her clothes. Christine was belligerent and stated that she would not say anything unless her attorney was present. After verifying that she did not require medical assistance, Height spoke to Thomas. Thomas signed a complaint against Christine and she was placed in custody for domestic battery. Subsequently, Height stayed with Christine when she was at the hospital. He overheard her tell hospital personnel that Thomas had pulled the ladder from under her. Height did not see this occur when he arrived at Thomas's house. The ladder was on the ground by the side of the garage or the driveway when he arrived. He contacted DCFS and had no further involvement in the case. He was not able to charge Christine with DUI because he never saw her drive and she did not have keys in her possession; thus, Height felt he did not have probable cause to arrest her.

¶ 67

H. Patty Bowker

¶ 68 Patty Bowker, Thomas's mother, testified that she is a police officer for a forest preserve district. Thomas, in her view, is a good father, is very attentive, and is always doing things with K.E.B., such as picking up old toys and rehabbing them. They love each other. Addressing Thomas's depression, Patty stated that he is anxious and stressed, but this has not affected his care of K.E.B. Christine is a good mother, in her view, except when she is drinking. Patty did not give a specific date when she saw Christine behaving in any manner other than as a good mother.

¶ 69 If Thomas was awarded residential custody, Patty, who cares for Arizona every other week, would do that with K.E.B. Patty would switch her work schedule to 3 to 11 p.m. This way, she would be available during the daytime to care for K.E.B. She would also switch her days off to two weekdays so that she could sleep at Thomas's house only three days per week. "I've worked 30 years and 13 years of rotating shifts while I raised three children."

¶ 70 On May 23, 2012, Patty went to Christine's house with Arizona to ask Christine's permission to take K.E.B. to Wisconsin. It was Thomas's weekend for visitation, and the couple had been arguing. Christine answered the door and let her in. The children played outside. Christine went inside and brought out the phone and handed it to Patty. On the line was Christine's attorney, who told Patty to leave the property.

¶ 71 On August 31, 2012, at 12:30 a.m., Patty received a voicemail message on her cell phone from Christine. Patty testified that she believed she was called accidentally. The audio consists of background noise that Patty described as slurred speech and snorting sounds.

¶ 72 Addressing another incident, Patty testified that, in early September 2009, Thomas sustained burns at work after a truck exploded. He was air lifted to Loyola's burn unit. Patty called Christine at work and told her what happened. They went to the hospital. It was a very stressful day. Patty dropped off Christine at her apartment that evening. Within 45 minutes or one hour, Christine's mother, who was driving up from North Carolina, called to say that Patty needed to go to Christine's apartment right away. When she arrived, Patty noticed that Christine was intoxicated. She had two bottles of alcohol in the kitchen: one was almost empty and other was half empty. Christine told Patty that she had walked to Walmart to purchase them after Patty dropped her off. She drank

because she was upset about's Thomas's condition. It was at about this time that they learned that Christine was pregnant with K.E.B.

¶ 73 In June or July 2011, Christine called Patty on a Sunday morning to ask if she would take care of K.E.B. Thomas had worked six days that week and went to the races in Joliet with friends on Sunday. Christine needed some "me time." Patty agreed. After Thomas returned later that day, there was an incident and the police were called. Patty and her husband went to the house and they saw that Christine had been drinking. When she drinks, she gets agitated, very upset; she speaks quickly and uses her hands. She also slurs her speech and becomes angry and argumentative.

¶ 74 I. Officer Collin Griffin

¶ 75 Aurora police officer Collin Griffin testified that, in mid-February 2012, he responded to a call from Thomas at the Walgreens at 1207 Randall Road. Thomas, who had K.E.B. with him and was present for a custody exchange, believed that Christine was not fit to drive because she was under the influence of alcohol. Griffin and his partner entered the store and located Christine. Griffin testified that she appeared to be intoxicated. She had glassy, bloodshot eyes, slurred her speech, and had difficulty walking, all of which reflect that someone is under the influence of alcohol. Christine, who was with another female who also appeared to be intoxicated, denied driving to the store and denied that she was intoxicated. When asked about the exchange, Christine told the officers that she was okay with Thomas taking K.E.B. for the remainder of the night. The officers asked Christine and her friend how they were going to leave the scene. Christine made several phone calls and stated that she had a family member or friend in the area. Christine and her friend then walked across the street. On cross-examination, Griffin testified that he was unaware that Thomas and Christine had made arrangements for Thomas to retain custody of their child due to the

fact that Christine was undergoing medical testing. Griffin did not charge Christine or her friend with any crime or have her take a Breathalyzer.

¶ 76 Officer Griffin responded to a call involving Christine's alleged intoxication on one other occasion. In 2011 or 2012, he and officer Nick Wright were dispatched to Thomas and Christine's residence on Randall Road for an alleged domestic battery. Thomas told the officers that he found empty beer cans in their son's room. Griffin briefly spoke to Christine and noticed that she "definitely" smelled of alcohol, but did not appear too intoxicated. She spoke "fine" and did not stumble while walking. A police report detailing the incident does not mention that Christine appeared intoxicated, although it does state that she was drinking a beer. It further states that she had visible redness on her chest and several scratches on her upper left arm. Christine's statement reflected that she attempted to walk away from Thomas and that he followed her, grabbed her upper left arm with his right hand, and scratched her. Also, Christine slapped Thomas in the face to remove herself from his grasp and walked away and called her father. Griffin testified that Thomas alleged that his eyeglasses were bent during the altercation. He also had a small abrasion to his face just below his left eye. The document also states that Christine began punching on the left side of his head with a closed fist.

¶ 77 Griffin further testified that he and Thomas have some mutual friends and he knows of Thomas and his brothers.

¶ 78 J. Susan Lonergan - Initial Testimony

¶ 79 Next, Christine called Susan Lonergan, the GAL. During her initial testimony (she was later recalled and revised her recommendation) Lonergan testified that she conducted an investigation of the case and recommends that it is in K.E.B.'s best interest that he remain in Christine's primary

residential custody and that Thomas be granted very liberal parenting time; specifically, more than the standard parenting time. Lonergan further testified that the parties be involved in counseling to address issues they may have and to enable them to learn how to cooperate for K.E.B.'s best interests. Lonergan recommended that Thomas take parenting classes, which he testified that he had done. She also recommended that Christine submit to random alcohol and drug testing for 12 months. Lonergan testified that she had not observed "direct evidence" of alcohol issues, but was concerned about K.E.B.'s best interests in that respect.

¶ 80 Lonergan verified that Christine's driver's license had been reinstated. In her initial report to the court, Lonergan had recommended that a BAID (*i.e.*, breath alcohol ignition intercept device) be installed in Christine's vehicle (to detect the presence of alcohol before the car was started), but, in light of financial considerations, withdrew the recommendation. Lonergan noted that Christine is enrolled in a paralegal program and has an "A" average.

¶ 81 According to Lonergan, none of the individuals she interviewed cited a specific incident where Christine's behavior harmed K.E.B. Christine is doing an adequate parenting job. She has been her son's primary caregiver throughout his life. Lonergan has no concerns about K.E.B. remaining in Christine's primary residential custody. "I'm concerned about the parents communicating and cooperating and the example they're setting for [K.E.B.]."

¶ 82 Lonergan further opined:

"Alcohol is not illegal in this country and people as adults, many of them drink responsibly, but Christine has been under a lot of scrutiny here and I just don't think she's going to fall off the wagon so to speak to harm [K.E.B.] in any way.

However, on the other hand, we have [Thomas] who is a highly enthusiastic dad. He is just fabulous. He is wanting to be there for every step of the way with the upbringing of [K.E.B.]. I don't think I've seen such an enthusiastic father and I have been doing guardian *ad litem* work for years and years and years and I'm highly impressed with [Thomas].

However, I simply don't think that there is enough evidence that I have seen that would overcome the fact that Christine's been the primary caretaker, has been doing a great job and we have a very healthy young man who is clean. He is smart. He is appropriately groomed. He has got more than appropriate behavior in my opinion for a two-year old and each parent is fully capable of being the residential parent, but Christine has demonstrated her competency thus far in [K.E.B.]'s life."

¶ 83 Addressing Sidney, Lonergan testified that she is also the GAL in a case involving Sidney and Brendan. Sidney and Christine have had a "rocky" relationship in the last couple of years. (Sidney's father, Dennis Schultz, has primary residential custody of Sidney and Brendan.) This is because Christine could not drive Sidney to various places, such as softball games. (Sidney is a highly talented athlete), due to her DUI. Since Christine got back her driver's license, their relationship has improved and Sidney has reinstated her time with her mother. Sidney has never stated that she was unhappy with her mother because she was an alcoholic or cocaine user. Thomas was very actively involved with Sidney and Brendan. Sidney and Brendan love K.E.B.

¶ 84 Addressing Officer Height's testimony about the January 8, 2012, child seat incident, Lonergan testified that she found him truthful and that, if Christine was intoxicated and was about to drive away with her son, that is endangerment.

¶ 85 Addressing the hair follicle test results, Lonergan testified that she is “not convinced that it was actually cocaine that was in [Christine’s] system.” Also, Lonergan felt “uncomfortable” that the report was not reviewed by a medical review officer. At the time of Christine’s deposition, in May 2012, she testified and submitted documentation concerning certain prescription drugs she was taking. They included hydrocodone for endometriosis, dental work, and her ankle injury. Christine took these from November 2011 to May 2012. The test results Myard testified to did not reflect positive results for any opiates. The “floor” level for opiates, however, was 500 milligrams and there is no notation as to when Christine had taken her most recent pain pill, if any, and what level of opiate that would have resulted in her blood.

¶ 86 K. Sandra Chambers

¶ 87 Sandra Chambers, Christine’s mother, testified that she is married to David Chambers and lives in North Carolina. Between K.E.B.’s birth and July 2011 (when Christine and Thomas broke up), Sandra was an overnight guest in their household for about five or six months, including six weeks after K.E.B. was born. Sandra got along great with Thomas.

¶ 88 According to Sandra, Christine was K.E.B.’s primary caregiver during this period. She observed her daughter do everything a mother does for her child. Sandra never saw Thomas get up with K.E.B. in the middle of the night. Thomas typically had two to three hours per day to spend with K.E.B. Thomas usually arrived home after work at about 5 p.m. He would shower, have dinner, talk or watch television, and then go to bed at about 7:30 p.m. at the latest. However, as to this time, she was satisfied with his parenting of K.E.B.

¶ 89 Addressing the presence of alcohol in the home, Sandra testified that she did not see it until K.E.B.’s first birthday. Before that, Christine and Thomas had a pact not to drink because they both

had issues with alcohol in the past and they wanted to be good parents. At the birthday party, there was a lot of beer; John Bowker, Thomas's father, brought two kegs of beer in his truck to put in the garage and more beer was in coolers. Sandra protested, and Christine told her that she (Christine) did not have a say in it; also, Thomas told Sandra not to worry about it. During the party, Sandra observed Christine drink beer. "It upset me terribly and I went in the house to calm down." Sandra did not observe Christine intoxicated, and her behavior appeared appropriate. It did not appear to her that Thomas was intoxicated. Sandra did not observe anyone doing a keg stand and she was unaware if Christine vomited. Christine put K.E.B. to bed and she did not appear to be impaired in any way. No one at the party complained to Sandra about Christine's drinking and everyone thought Sandra was overreacting to the presence of alcohol. Sandra spent the night.

¶ 90 On June 6, 2011, the day of the spitting episode, Sandra was in North Carolina. She received a call from Christine, who was upset because Thomas had thrown her out after an argument. She was crying and did not sound intoxicated. (When Christine gets upset, her voice goes up and she gets excited and speaks quickly; she gets anxious. When Christine is intoxicated, she is very introspective.) Christine told her mother that Thomas had grabbed her and spit in her face and she had slapped him. They had several more conversations that day. Christine was still upset. According to Sandra, this was not the first argument the couple had. In October, Christine called Sandra to say that they fought and that Thomas threw Christine's clothes outside and urinated on them. The argument ensued after Christine had asked Thomas why he had not eaten his lunch that day. In September 2010, when K.E.B. was about four months old, Thomas called Sandra to tell her that he was throwing Christine out because she was smoking. He also smoked. Thomas locked out both Christine and K.E.B.

¶ 91 Sandra further testified that she and Thomas's mother both tried to convince the couple to attend couple's counseling. However, Thomas refused. Another incident involved Christine rolling up a rug. The rug got caught, and when she tugged it, it became free and grazed Thomas's face. He accused her of hitting him with a rug.

¶ 92 Sandra and her husband arrived for a visit with Christine on May 26, 2012, and stayed for five days. Christine was never actually alone during the visit. Sandra did not observe any alcohol in the house. During the visit, on May 30, 2012, Christine submitted a urine sample and hair follicle sample. According to Sandra, she would have been able to notice from Christine's demeanor if she had consumed any alcohol and she saw no evidence of it.

¶ 93 On January 8, 2012, Sandra received two calls from Christine. The first one was at 8 p.m., and Christine told her mother that Thomas was refusing to give her K.E.B. He accused her of being intoxicated, and Christine denied that she was. Sandra overheard Christine ask Thomas to go into the house and get the child seat so that she could take K.E.B. home, but he refused. Sandra did not believe that Christine was intoxicated. Christine called again later. Sandra and David put Christine on the speaker phone. Christine was crying and related the incident with the ladder, telling her parents that Thomas pulled the ladder out from under her. Sandra overheard the police officer in the background. Christine told him what happened, and he told her that he did not care. Sandra flew to Illinois the next day and picked up Christine from jail. They tried to locate K.E.B.. Thomas did not answer the phone. They drove to his parents' house, followed by the police. Thomas pulled up in his car and then quickly drove away. The police instructed Sandra to return home and told her that they located the child. Subsequently, Sandra picked up K.E.B. at Walgreens; John Bowker dropped him off. K.E.B., who had been in Thomas's care, was covered in vomit and had soiled his

diaper and stained his pants. “He was filthy. It was very disturbing.” Christine cried when she saw him. After they changed his diaper, they noticed a diaper rash that was blistered.

¶ 94 In August 2009, Sandra drove up from North Carolina. During the drive, she spoke to Christine on the phone; she was very upset about Thomas sustaining burn injuries at work. She did not sound intoxicated. Sandra stayed with Thomas and Christine for six to eight weeks. She observed Christine give Thomas his medications.

¶ 95 Sandra further testified that she has observed Thomas intoxicated. In May 2011, in the parking lot of Buffalo Wild Wings in Aurora, he had a difficult time balancing, his eyes were glassy, and he was grinning (which he usually does not do). Later that day, when Thomas returned from the bar/restaurant, he told Sandra that he and Christine had argued and she was still at the restaurant. John Bowker subsequently picked up Christine and brought her home. She was upset and had a cup of coffee with her. She did not appear intoxicated. Sandra testified that she also saw Thomas intoxicated at K.E.B.’s first birthday party. (Earlier in her testimony, she stated that Thomas was not intoxicated.)

¶ 96 Christine recently purchased a townhouse in Elgin; Sandra and David provided the down payment, but Christine pays the mortgage and the association fees. They also bought a car for Christine. According to Sandra, Sidney is 14 years old and has a normal relationship with Christine. She is a teenager and is “very unhappy” about following rules. K.E.B. gets along very well with Brendan and Sidney.

¶ 97 Thomas’s counsel stipulated that Christine was a competent parent when she is sober.

¶ 98 L. Officer Ryan Edwardson

¶ 99 In rebuttal, Thomas called Officer Ryan Edwardson, who works as a patrol officer in Hampshire. On October 6, 2012, after trial had commenced in this case, he responded to a report that Christine was driving erratically. He approached her at a Casey's General Store, where she was attempting to pump diesel fuel into her vehicle. Catherine Brower, Christine's former mother-in-law, flagged down Edwardson. He observed that Christine could not place the nozzle into her vehicle's gas tank. Edwardson noticed a strong odor of alcohol coming from her and that her speech was slurred. He reviewed her license and insurance card and administered field sobriety tests. Christine did not pass the one leg stand test, the walk-and-turn test, or the horizontal gaze nystagmus test.¹ The results reflected that she was under the influence of alcohol. Christine refused to take a Breathalyzer test at the police station. She was arrested.

¶ 100 On cross-examination, Officer Edwardson further testified that the only time he observed Christine's driving was when she pulled into the Casey's parking lot (a somewhat complicated approach) and that she observed all laws at that time. He also testified that an ankle injury could cause someone to have difficulty standing on one leg. Addressing the gas pumps, Edwardson stated that, other than the handle color, the pumps for diesel and regular gas are substantially the same.

¶ 101 M. Susan Lonergan - Rebuttal Testimony

¶ 102 Lonergan, the GAL, was recalled and testified that she continued to conduct an investigation in this case, including a video taken by Dennis Schultz on October 6, 2012, of Christine at a bar near

¹Edwardson was asked what tests he administered, and he replied "the one leg stand test, the walk-and-turn test, and the horizontal gaze nystagmus." When asked if Christine passed "those tests," he replied "No, she did not." He was then asked if this would "indicate that she was under the influence of alcohol?" Edwardson replied, "That's correct."

a Subway sandwich shop. As a result, Lonergan changed her recommendation and now recommends that Thomas receive residential custody of K.E.B. because she “has questions regarding Christine’s decision making with respect to her consumption of alcohol.” Lonergan testified that she believes that these issues could potentially put K.E.B. at risk.

¶ 103 On cross-examination, Lonergan testified that, in the video, there was no glass in front of Christine; only her keys and cell phone. When asked if there was alcohol anywhere on the bar, Lonergan replied “Not that I could visualize.” Christine’s voice was audible, and, in Lonergan’s opinion, she did not sound intoxicated. Dennis Schultz, who took the video, is the father of Christine’s other children. They are currently undergoing a very contentious custody evaluation. (Lonergan is also the GAL in that case.) After the video was taken, there was a loud and public argument at a softball field, where Schultz and his mother Catherine Brower screamed at Christine. Lonergan characterized Schultz as a “bully” and testified that Schultz has spoken to Lonergan in a demeaning fashion about Christine.

¶ 104 The incident affirmed possible conclusions that could have been made in Lonergan’s prior report, but the incident was the catalyst for the change in her recommendation. Lonergan further stated that, even if the criminal case against Christine is dismissed, her new recommendation would not change. She agreed that Christine is a good mother and that no harm has ever come to K.E.B. while he has been in her care. (The only time where harm has come to him has been while he has been in Thomas’s care on January 9, 2012, when he was dirty and had a blistering diaper rash.) Further, K.E.B. was not present at the gas station. Lonergan further explained that the change in her recommendation “has nothing to do with the incident itself. It has to do with the process by which

Christine admittedly deals with stress.” Each parent has faults. Christine’s actions “tip[ped] the scales.”

¶ 105 Lonergan is aware that Christine put a BAIID device in her car without court order. Addressing Thomas, Lonergan testified that she remains concerned about his judgment in moving in with his girlfriend of one month. However, Lonergan met with her and believes that the children are safe with her.

¶ 106 If K.E.B. were removed from Christine’s care, he would need to get used to a new routine; his schedule would be disrupted. Lonergan would like to see him continue to be in daycare. He would be comfortable in either parent’s care. She recommends that there be no drinking of alcohol when either parent has K.E.B. in their care. Lonergan also recommends that all guns be removed from Thomas’s home (they are still in the home). She also noted that, during a mid-February 2012 visit, K.E.B. appeared to be extremely tired and “ ‘shell shocked’ ” by Andrea’s children’s actions. Lonergan also recommends that Christine have parenting time in excess of the standard (*e.g.*, Thursday after school until Monday morning every other weekend; two nights on the off week).

¶ 107 N. Dennis Schultz

¶ 108 Dennis Schultz testified that he is Sidney and Brendan’s father (Christine is their mother). On October 6, 2012, Schultz was at Sidney’s softball game in Davis Junction. He was there with his parents (Doug and Cathy Brower). Christine and Brendan were there; Brendan was in Christine’s care. Sidney was not in Christine’s care. Christine arrived with Brendan at about 10:30 a.m., the time of the second game.

¶ 109 About 35 to 45 minutes into the game, Christine left to get Brendan a sandwich from Subway, which was two minutes away. After 35 minutes, Schultz asked his parents to watch

Brendan and he went to Subway. The shop is in a strip mall, next to a liquor store. He saw Christine's vehicle in the parking lot (it had North Carolina license plates). Schultz retrieved his smartphone and started videotaping; he recorded Christine's car and his approach to the liquor store. Inside, Christine sat at the bar. He asked Christine what she was doing in the bar and she replied that she was watching a game on the television while waiting for the bread to be baked at the Subway; Brendan has allergies. Schultz told her that she was not supposed to be there. According to Schultz, within Christine's reach at the bar were her car keys, a glass with a liquid in it, and a tip jar with cash in it.

¶ 110 He returned to the game, and, after about 10 to 15 minutes, Christine returned. When Brendan wanted to eat his sandwich near his grandparents, Christine became unhappy. She became louder as the game progressed. After Christine had eaten, Schultz noticed that her eyes were "completely glazed" and bloodshot and that she slurred her speech. She had food on her face and a mustard smear on her chin. Also, Christine was loud, erratic, and repetitive. Schultz was not close enough to her to detect the odor of alcohol. The parties had a discussion; Christine was not happy that Brendan did not eat with her and blamed Schultz and his parents. Christine stated that she wanted to leave and told Brendan that they were going to leave. Schultz told her that she could not take Brendan with her because he believed she was under the influence of alcohol. Schultz also told Christine that she could only take Brendan if, after he called the police, she passed a Breathalyzer test. She ignored Schultz and walked away; she did not take Brendan with her. Schultz denied screaming at Christine.

¶ 111 Schultz contacted the police. About 40 to 45 minutes after the game ended, while driving on Route 72 in De Kalb, he observed Christine's car at a McDonald's restaurant at Route 23. He

turned around, and Christine drove out of the parking lot. Schultz followed her. He testified that he observed erratic driving; three times, he observed Christine's vehicle travel from the center of the road to the white line on the right side.

¶ 112 On cross-examination, Schultz testified that he is involved in a custody dispute with Christine.

¶ 113 O. Casey Woodham

¶ 114 After Thomas rested, Christine called Casey Woodham. Woodham provided through DCFS individual home counseling services to Christine from November 1, 2011, through April 30, 2012. Woodham testified that Christine actively participated in counseling. Woodham visited Christine's home in Aurora and saw her for at least one hour per week for about six months. She observed Christine in an upset state at least 10 times. The sessions involved discussions of "rough and emotional things going on in her life." When upset, Christine gets visibly shaken (due to her anxiety disorder). She has rapid, racing thoughts and, so, she speaks quickly, cries, and slurs her speech. Even her North Carolina accent becomes more pronounced. She could appear intoxicated when in this state. The tears caused redness in her eyes. Woodham explained that the symptoms of Christine's anxiety disorder were racing thoughts, irritability, impulsiveness, tearfulness, and insomnia.

¶ 115 Addressing the condition of Christine's home, Woodham stated that it was always very clean and everything was in its place. Some of Woodham's visits were unscheduled, and she would "just stop in." Woodham did not observe Christine use any alcohol or see any in the refrigerator or garbage can. Woodham never detected the odor of alcohol during her visits. Christine's interaction

with K.E.B. was very attentive; they have a great bond. The child was always clean. There were no signs of neglect in the home.

¶ 116 During the time she counseled Christine, Woodham was never concerned about K.E.B.'s well-being while he was in his mother's care, nor did she believe that it would be in the child's best interest to remove him from her care. Christine was compliant with Woodham's recommendations.

¶ 117 P. Trial Court's Ruling and Subsequent Proceedings

¶ 118 On January 24, 2013, the trial court awarded the parties joint custody with residential custody to Thomas. It found that: Christine has been the primary caregiver since the couple separated; Thomas has been employed full-time (including regular overtime); both parties are active in K.E.B.'s life and have shared parenting time; that Thomas's parents live near him and have spent considerable time with the child and assisted in his care; and Christine's parents live out of state, but have visited frequently and relate well to the child but are less available to care for him. Addressing the parties' substance abuse issues, the court further found that: both parents have a history of substance abuse, "which the father has done a better job of addressing and moving on from at this point;" Christine has DUI cases from 2006 and 2007 and currently has one pending (from October 6, 2012) where Officer Edwardson testified that he observed her at a gas station, attempting to pump diesel fuel into a non-diesel car and witnessed a strong odor of alcohol and slurred speech. The trial court noted that the GAL was recalled after the most recent incident and changed her recommendation to residential custody for the father "based upon the mother's poor judgment on her use of alcohol." The court referenced Christine's attempt to take Brendan in her car after the softball game and being prevented from doing so by others and her January 8, 2012, attempt to drive off with K.E.B. without a child seat, where Thomas stopped her and called the police, who noted as to Christine a strong odor of

alcohol, slurred speech, and red, glassy, blood-shot eyes. It found that these incidents distinguished this case from one upon which Christine relied.

¶ 119 The court further determined that K.E.B. is well adjusted to and comfortable in both parents' homes and enjoys daycare. It further found that the fact that Thomas lives with his girlfriend and her two children is not an impediment to his custody of K.E.B. Accordingly, it awarded residential custody of the child to Thomas, finding that the "case presents a pattern of alcohol abuse by [Christine] in response to the stress/anger which she has heretofore insufficiently acknowledged." Finally, the court found that caseworker Woodham's testimony was "outdated and contradicted" by the October 6, 2012, events leading to Christine's third and pending DUI case.

¶ 120 On the same date, the trial court entered a judgment order, directing that Christine refrain from using illegal drugs or alcohol and setting forth the visitation guidelines (for Christine, generally, every other weekend and two weeknights), which provided that Christine have overnight visitation up to three times per year if a maternal grandparent is present and viewed by Thomas at the visitation drop-off. The court further ordered that pickups and drop-offs for Christine's parenting time take place at her residence by Thomas or his family member. The court directed Christine, at her own expense, to secure an alcohol evaluation report from an approved agency and to enroll in any recommended alcohol treatment program.

¶ 121 On March 26, 2013, the trial court, with one exception,² denied Christine's motion to reconsider. Christine appeals.

¶ 122

II. ANALYSIS

²Christine had challenged Thomas's use of babysitters instead of daycare as recommended by the GAL. The court ordered that K.E.B. be enrolled in daycare at least two days per week.

¶ 123 Preliminarily, we address Christine’s argument in her reply brief that Thomas’s statement of facts in his appellee’s brief be disregarded or struck for being biased, conclusory, and argumentative and, thus, failing to comport with Illinois Supreme Court Rule 341(h)(6) (eff. Sept. 1, 2006). The striking of an appellate brief, in whole or in part, is a harsh sanction; it is appropriate only when the alleged violations of procedural rules interfere with or preclude review. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). Because the improprieties here do not significantly hinder our review, we decline Christine’s request to strike Thomas’s statement of facts. However, we will disregard any inaccurate, unsupported, or argumentative statements. *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008).

¶ 124 Turning to the merits, Christine asserts on appeal that the trial court’s rulings were erroneous and were made on the basis of her past alcoholism. She concedes that she drank to excess years ago, but that the latest of her DUI convictions was in 2007, and she notes that the October 6, 2012, charge was ultimately dismissed. On appeal, she specifically challenges: (1) certain of the court’s factual findings; (2) its ultimate residential custody award; and (3) aspects of the visitation order.

¶ 125 A. Factual Findings

¶ 126 1. October 6, 2012, Softball Game

¶ 127 First, Christine argues that the “obvious implication” of the court’s finding about her and Brandon at the softball game is that she had, in fact, been drinking. She contends that there was no credible evidence that she had anything to drink at the bar while waiting for her Subway order to be prepared. Christine notes that there is no evidence in Dennis Schultz’s video of her at the bar with alcohol and claims that he “lied” about a glass of liquid being on the bar along with her car keys and the tip jar. According to Christine, Lonergan testified that she did not see a glass in the video. Also,

nowhere in Dennis's testimony about his confrontation with her did he state that he said anything when he confronted her about any glass of alcohol. She claims that this omission "proves that no liquor was involved, and Dennis' statements to the police about how [Christine] looked at the game were simply false." Christine argues that Dennis' false statement about the glass of liquid on the bar, disproven by his own video, and his failure to accuse her in the bar proved his lack of credibility about the glass of liquid. That failure, in turn, calls into question his subsequent description of her as having glassy, bloodshot eyes and slurring her speech when she came back with the sandwiches. Christine asserts that Dennis was not credible and, thus, the court's finding that Christine had used poor judgment concerning alcohol when she attempted to take Brandon in the car with her was against the manifest weight of the evidence.

¶ 128 "It is well established that determinations by the trier of fact as to the credibility of parties are given great deference." *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). A judgment is against the manifest weight of the evidence when an opposite conclusion was apparent or when the findings appear to unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Archibald*, 363 Ill. App. 3d 735, 738-39 (2006).

¶ 129 We conclude that Christine cannot overcome this highly deferential standard. She fails to mention Officer Edwardson's testimony. Edwardson, who approached Christine at Casey's General Store after she left the softball game, testified that he observed her attempting to put a diesel fuel pump into her automobile, which was presumably non-diesel because the pump did not fit in it. Edwardson further testified that he noticed a strong odor of alcohol on Christine and that she slurred her speech. Critically, Christine failed all three (contrary to her assertion that she failed only one) of the field sobriety tests that Edwardson administered (*i.e.*, the one-leg-stand test, the walk-and-turn

test, and the horizontal gaze nystagmus test), and he arrested her. Although Edwardson conceded on cross-examination that he did not observe Christine's driving for an extended time and that an ankle injury could cause someone to have difficulty standing on one leg, his testimony overall could have been reasonably found to have been credible, especially because he did not have a clear bias in this case. It was also corroborative of Dennis testimony. Although Dennis is involved in a custody dispute with Christine and, thus, had an obvious bias, and although he did not videotape any drink in front of Christine at the bar, he also testified that, after she returned with the sandwiches, her eyes were "completely glazed" and bloodshot and she slurred her speech. He also stated that she was loud, erratic, and repetitive.

¶ 130 Lonergan's testimony concerning the video, contrary to Christine's argument, does not warrant a conclusion that the trial court's determination was against the manifest weight of the evidence. Lonergan, the GAL, testified that, in Dennis' video, there was no glass in front of Christine; she saw only Christine's keys and cell phone. When asked if there was alcohol anywhere on the bar, Lonergan replied "Not that I could visualize." Further, Christine's voice, in Lonergan's opinion, did not sound intoxicated. Christine contends that Lonergan's testimony is not uncertain at all about no glass of liquid being in front of Christine. We disagree. Lonergan was not present at the bar, and she did not testify that the video showed the *entire* bar area. It was not unreasonable for the court to credit Edwardson's and Dennis's testimony more than Lonergan's testimony. Again, Edwardson observed Christine and testified that she failed the field sobriety tests. His testimony corroborated Dennis's testimony concerning his observations of Christine's behavior.

¶ 131 In summary, given the deferential standard of review, we cannot conclude that the trial court's finding that Christine used poor judgment concerning alcohol when she attempted to take Brendan in the car with her was against the manifest weight of the evidence.

¶ 132 2. Placing K.E.B. in Car on January 8, 2012

¶ 133 Next, Christine argues that the trial court's finding that she used poor judgment on January 8, 2012, when she attempted to place K.E.B. in her car was against the manifest weight of the evidence. She argues that Officer Height's testimony does not support a finding that she was intoxicated and that Thomas's testimony should have been discounted, given his obvious bias.

¶ 134 We conclude that the trial court's findings were reasonable. Officer Height testified that, when he approached Christine, she appeared to be intoxicated. Further, consistent with Thomas's testimony, Height testified that Christine's speech was "very slurred," she had red, glassy eyes, and stumbled (although he conceded that stumbling is consistent with a broken ankle and red eyes would be consistent with crying from an injury), and he smelled (consistent with Thomas's testimony) alcohol on her breath (he was certain that it was Christine's breath and not coming from her clothes, as she claimed). Although Height charged Christine with domestic battery, not DUI, this does not undermine his testimony that he believed she was intoxicated. He explained that he did not believe that he had probable cause to arrest Christine for DUI because he did not see her drive and she did not have keys in her possession.

¶ 135 In summary, it was not unreasonable for the trial court to find that Christine used bad judgment concerning alcohol and to discount or reject that Christine was hobbling around, had red eyes, and slurred her speech because she had broken her ankle from the fall.

¶ 136 3. Finding that Christine had a Pending DUI following October 6, 2012, Incident

¶ 137 Next, Christine argues that the trial court erred in making its custody determination based on its (outdated) finding that she had a current DUI stemming from the October 6, 2012, softball game incident. She asserts that the court knew that she was challenging the DUI and that, on the date the court issued its ruling, January 24, 2013, the DUI and suspended license had been rescinded. Accordingly, in her view, the court's finding that she had a current DUI was against the manifest weight of the evidence and could not be used as a basis to take away residential custody.

¶ 138 We reject this claim. In its written findings, the court twice makes reference to Christine's third DUI, but notes that it is in "pending" status, which accurately reflects the evidence at the time of trial. Further, the report of proceedings reflects that the court was aware that Christine was challenging the DUI. Nowhere in the record or in the court's findings does the court suggest that the third DUI matter was resolved or that its ultimate resolution had any bearing on the court's findings. In its written findings, the court adopts the GAL's recommendation that Thomas be awarded residential custody of K.E.B. "based upon [Christine's] poor judgment on her use of alcohol." It specifically noted the October 6, 2012, softball game incident and the January 8, 2012, child seat incident (further noting Officer Height's testimony that Christine's breath smelled of alcohol and that she slurred her speech and had red, glassy, bloodshot eyes). The trial court made a second reference to the third DUI in its written findings, where it discounted caseworker Woodham's testimony (that, in late 2011 and early 2012, she observed no alcohol in Christine's home) as being outdated given the events leading to Christine's "third and pending DUI case."

¶ 139 The record is clear that the court's findings are based on Christine's use of "poor judgment" concerning alcohol and not solely on the fact that her actions resulted in a DUI charge, whatever its ultimate resolution. We cannot conclude that the court's findings were erroneous given the fact that

the DUI charge was ultimately dismissed. Although Christine's intoxication is relevant to K.E.B.'s well-being, whether or not Christine's actions met any applicable standards for a successful criminal prosecution is not at issue in this case.³

¶ 140

B. Custody Award

¶ 141 Next, Christine argues that the trial court's award of residential custody of K.E.B. to Thomas was against the manifest weight of the evidence and constituted an abuse of its discretion. For the following reasons, we disagree.

¶ 142 A trial court's custody determination will not be disturbed on appeal unless the decision was against the manifest weight of the evidence or unless the court abused its discretion. *In re Marriage of Craig*, 326 Ill. App. 3d 1127, 1129 (2002). A court's decision is against the manifest weight of the evidence when an opposite conclusion is apparent or the findings were unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 80 (1996). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). "Great deference must be accorded

³Christine also complains that the trial court erred in noting that it found *In re Marriage of Rizzo*, 95 Ill. App. 3d 636 (1981), a case she cited to the court, distinguishable. In *Rizzo*, the respondent argued that the trial court erred in excluding testimony about the petitioner's alleged alcohol consumption and intoxication. The reviewing court rejected the claim, holding that there was no support in the record for this allegation and that the alleged alcohol and drug abuse and its alleged effect on the children *was* presented at trial. *Id.* at 641-42. We reject Christine's claim, as the exclusion of evidence is clearly not at issue here.

to [the court's] decision since the trial court is in a superior position to judge the credibility of witnesses and determine the needs of the child." *Craig*, 326 Ill. App. 3d at 1129.

¶ 143 In determining custody under the Parentage Act, a court must apply the relevant provisions of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/101 (West 2012)). 750 ILCS 45/14(a)(1) (West 2012). Section 602(a) of the Dissolution Act requires courts to determine custody in accordance with the best interest of the child by considering all relevant factors, including the 10 factors therein:

- “(1) the wishes of the child’s parent or parents * * *;
- (2) the wishes of the child * * *;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings[,] and any other person who may significantly affect the child’s best interest;
- (4) the child’s adjustment to his home, school[,] and community;
- (5) the mental and physical health of all individuals involved;
- (6) the physical violence or threat of physical violence by the child’s potential custodian, whether directed against the child or directed against another person;
- (7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person;
- (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
- (9) whether one of the parents is a sex offender; and
- (10) the terms of a parent’s military family-care plan[.]” 750 ILCS 5/602(a) (West 2012).

¶ 144 Section 602(b) of the Dissolution Act provides that a court “shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child.” 750 ILCS 5/602(b) (West 2012). Further, “a parent’s use of drugs is relevant to the issue of custody only if the parent’s conduct can be shown to affect his [or her] mental or physical health and his [or her] relationship with the child.” *In re Custody of Gonzalez*, 204 Ill. App. 3d 28, 34 (1990).

¶ 145 We agree with the parties that five of the aforementioned factors are relevant here.⁴

¶ 146 1. Third and Fourth Factors

¶ 147 Addressing the third factor—K.E.B.’s relationships to his siblings, parents, and significant others—Christine agrees that K.E.B., who is three years old, has an excellent relationship with both her and Thomas, but contends that he is far more closely bonded with her since she has been his primary caregiver his entire life. She argues that Thomas, while loving his son, always has help from his parents, who live close by. Also, Christine notes that the only time that K.E.B. came to harm during the progression of this case was when Thomas was ordered to return him to Christine after she was released from jail the morning after the January 8, 2012, incident. At this time, the child’s diaper was soiled, he had a diaper rash, and he was covered in vomit. Christine asserts that K.E.B. clearly had not been attended to for hours. Christine also asserts that K.E.B. has an excellent relationship with her two other children. Although she also concedes that he gets along well with Thomas’s girlfriend’s two children, Christine contends that they are very boisterous such that Lonergan reported that K.E.B. appeared shell-shocked by their play during one of her visits.

⁴As to the parents’ wishes, they have similar requests. K.E.B. is too young to voice his wishes. The presence or threat of physical violence, sex offender status, and provisions for military personnel are not relevant here.

Addressing the child's grandparents, Christine notes, that, although her parents live out-of-state, her mother made frequent visits to Thomas and Christine's home and to Christine's current home. She also complains that John Bowker makes inappropriate comments or uses foul language in K.E.B.'s presence.

¶ 148 We conclude that the trial court's assessment that Christine has been K.E.B.'s primary caregiver since the parties separated, that both parents are active in K.E.B.'s life, and that the paternal grandparents are more available to provide support for their grandchild are reasonable. It appears to be undisputed that K.E.B. has a good bond with his parents and relates well to his grandparents. However, given the fact that Christine has been the primary caregiver, it appears that this factor weighs somewhat in her favor because K.E.B. has presumably formed a stronger bond with her.

¶ 149 As to the fourth factor—K.E.B.'s adjustment to his home, school, and community—before the trial court's custody award, Christine notes, K.E.B. lived with her most of the time and Thomas had weekend and midweek parenting time. In Christine's view, K.E.B. had established a routine with her and she met his needs very well. She notes that she has now, with her parents' assistance, purchased a home in Elgin and she has found full-time employment and placed her son in daycare. Christine also notes that everyone agrees that she is an excellent mother to K.E.B. Although Thomas may qualify this praise by noting that she is a good mother when she is sober, Christine argues that at trial no one produced one example of her failing to act appropriately while caring for K.E.B. The trial court, in her view, ignored the absence of this evidence. Christine further notes that Thomas has never visited K.E.B. at his daycare, works long hours, and has proposed a complicated arrangement to care for K.E.B. The trial court, Christine complains, did not consider K.E.B.'s best

interests and was “intent on punishing” her “for having a drink at a time when she was miles away” from her son and for being cited with a DUI that was subsequently dismissed.

¶ 150 We believe that this factor does not weigh strongly in either parent’s favor. The court reasonably could have found that K.E.B. does well in either parent’s home (Christine recently moved into a new home) and that he likes his daycare center, where, given that both parents work, he will continue to attend. As to Christine’s argument that the trial court punished her for consuming alcohol, we address Christine’s alcohol issues below.

¶ 151 2. Willingness and Ability of Each Parent to Facilitate a Continuing Relationship

¶ 152 Next, addressing the willingness and ability of each parent to facilitate a continuing relationship, Christine contends that, although both she and Thomas were generally cooperative concerning parenting time with K.E.B., she was the one who facilitated a good relationship between the child and Thomas, while Thomas repeatedly disrupted her time with her son by deciding that she was drunk and calling the police. She also notes that the only occasion where the police issued any alcohol-related citation—the softball game—did not involve K.E.B. and the citation was ultimately dismissed. Christine also notes that she did not agree to a change in Thomas’s parenting time on only one occasion when he wanted to take K.E.B. out of state for the weekend. In retaliation, when she asked Thomas for a few extra hours so that K.E.B. could attend a friend’s birthday party, Thomas refused. She further notes that she asked for joint custody in this case and Thomas asked for sole custody.

¶ 153 We disagree that this factor weighs in Christine’s favor, as she herself essentially concedes that Thomas was generally cooperative as to parenting time. Her complaints concerning calls to the police are more properly addressed in the follow discussion.

¶ 154 3. Health of All Involved Individuals and Alcohol and Drug Abuse

¶ 155 Christine argues that the trial court's decision is manifestly unjust and that the court's order took away a toddler from his mother who has been his primary caregiver for his entire life and who has always sheltered him from harm. The court, in her view, awarded residential custody to a parent who is primarily unavailable to the child.

¶ 156 Christine points to several instances (*i.e.*, June 6, and July 10, 2011, January 8, and October 6, 2012) where Thomas contacted the police and raised allegations of alcohol abuse by Christine. She notes that in none of those occasions did the responding officer issue to her any alcohol-related citation, other than the October 2012 DUI that was ultimately dismissed.⁵ She also argues that case law requires "drunkenness so severe and frequent that the children's lives were actually placed in jeopardy." See *In re Marriage of Oertel*, 216 Ill. App. 3d 806, 815-16 (1991) (reversing and awarding sole custody of child to the mother, where the father, an admitted and diagnosed alcoholic, continued to drink beer, endangered his daughter's life on at least one occasion, and violated the original custody judgment that required him to live with his parents); *In re Marriage of Neeld*, 96 Ill. App. 3d 40, 48 (1981) (affirming transfer of custody of child to father, where mother's "quite pronounced" abuse of alcohol and drugs impaired her ability to function as a physician and endangered her child's life, even though she had made progress in treating her condition).

⁵Further, Christine repeatedly contends that the record permits the inference that she passed two of the field sobriety tests that Edwardson administered on October 6, 2012. This is not the case, as he clearly testified that she did not pass the three tests he administered. On cross-examination, he was asked by Christine's counsel only about the one-leg-stand test and testified that someone with an injured ankle could have difficulty standing on one leg.

¶ 157 Addressing the random urine tests to which she submitted, Christine notes that she never had a “dirty” test until a different set of tests was ordered by the court. She questions their accuracy, arguing that, even though she had been taking opium-based painkillers, the opiates did not register on the tests. She also notes that the reports were not reviewed by a medical review officer, even though they stated that they had been. Finally, Christine notes that she voluntarily had a BAIID device installed in her vehicle, thereby ensuring that she would never be able to drive while intoxicated.

¶ 158 We conclude that the trial court’s residential custody award was not against the manifest weight of the evidence and did not constitute an abuse of discretion. Although both parents had health and substance abuse related issues, it was not unreasonable for the court to determine that it was in K.E.B.’s best interests that Thomas be awarded primary residential custody.

¶ 159 Thomas recently suffered a heart attack and is currently under care for depression. He was also in treatment for substance abuse in 2006 or 2007. However, as the trial court reasonably found, Thomas has done a better job of addressing his issues than Christine has done.

¶ 160 Although many trial witnesses had an obvious bias, it was the trial court’s function to assess their credibility. *In re Marriage of Smith*, 172 Ill. 2d 312, 324-25 (1996) (it is not a reviewing court’s function to reweigh the evidence); *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) (it is not the appellate court’s function to assess witness credibility and set aside the trial court’s determinations merely because a different conclusion could have been drawn from the evidence). We cannot conclude that the trial court’s resolution was unreasonable. Critically, the court found credible the police officers’ testimony that Christine appeared intoxicated during several incidents and this was corroborated by other witnesses. We rejected above Christine’s challenge to

the trial court's factual findings concerning the January 8, 2012, child seat incident and the October 6, 2012, softball game/gas station incident. We find unavailing Christine's argument that the trial court erred because she was not issued any alcohol-related citations (other than the most recent one that was dismissed) during these and other occasions when the police responded to a call from Thomas or his family. The fact that no conviction ultimately resulted from these incidents does have some bearing on the officers' credibility, but not nearly to the extent that Christine argues and does not, on its own, warrant reversal of the court's order.

¶ 161 We also reject Christine's argument that the drug and alcohol test results do not undermine her case. Although Christine did not have a "dirty" test during the time that she was monitored by DCFS, she did test positive for alcohol and cocaine in the tests administered by Myard's company in May and June 2012. Christine attempts to discredit these tests by arguing that they were not accurate because the opium-based painkillers she was taking at the time did not register on the tests. She fails to mention that Myard testified that her company's hair follicle test accounted for items that are not specifically cocaine and that cocaine is a separate category from opiates in her testing, which also accounts for legitimate prescription drugs (such as those that Christine was taking). Addressing another company's test results, which reflected a negative result for cocaine metabolite in a urine sample that Christine had submitted, Myard explained that her test was positive because it tested hair and that cocaine stays in hair for 90 days. She also questioned the quality of the testing at the other laboratory. The trial court could reasonably have found Myard's testimony credible on the testing issue, as there was nothing inherently incredible about her explanation of her methodology or procedures. In this respect, we reject Christine's argument (which is unsupported by citation to any authority) that, where a medical review officer did not review the test results, this renders them

unreliable. Myard explained that the tests' accuracy is not affected by the actions of such an officer and that her company does not utilize such an officer because this testing was not for "federally regulated certification."

¶ 162 We further reject Christine's argument that case law requires that the parent's alcoholism be so severe that his or her child's life be actually endangered or put in jeopardy. See *Oertel*, 216 Ill. App. 3d at 815-16; *Neeld*, 96 Ill. App. 3d at 48. Thomas cites *Doyle v. Doyle*, 62 Ill. App. 3d 786, 790 (1978), *overruled on other grounds*, *In re Custody of Harne*, 77 Ill. 2d 414, 419-20 (1979), where the appellate court affirmed the trial court's custody award of the parties' two children to the father. In that case, the mother heavily consumed alcohol, including having a seizure or blackout. The reviewing court held that, although the mother had subsequently made very good progress in eliminating her alcohol abuse through treatment programs, there was no assurance that it would not recur. *Id.* Allowing "the children to live with their mother would severely endanger their physical and emotional health." *Id.* Christine's argument that she never endangered K.E.B. in any way and that she displayed alcohol-related symptoms that were all explained by far more believable facts (*e.g.*, a fractured ankle, a strong antihistamine, and a public argument with people who want to alienate her from her children) is not well-taken. Again, the trial court assessed all of the evidence and the witnesses's credibility, and it is not this court's function to reweigh the evidence or to set aside its findings merely because a different conclusion could have been drawn from the evidence. *Smith*, 172 Ill. 2d at 324-25; *Pfeiffer*, 237 Ill. App. 3d at 513. We cannot conclude that the court's assessment was unreasonable. Further, the fact that K.E.B. was not actually harmed during the various incidents related during trial does not necessarily mean that Christine did not place him (in

those cases where he was present) in a situation (or could place him in the future due to the ongoing nature of her alcohol-related issues) where great harm could come to him. *Id.*

¶ 163 In summary, the trial court did not err in awarding primary residential custody of K.E.B. to Thomas.

¶ 164 C. Visitation Award

¶ 165 Christine’s final argument is that, if this court does not alter the residential custody award, the trial court’s imposition of restricted visitation—specifically, no unsupervised overnight visitation—constituted an abuse of discretion or was manifestly unjust (*In re Marriage of Anderson*, 130 Ill. App. 3d 684, 688 (1985)) because the court did not make the requisite finding that such visitation would seriously endanger K.E.B.’s physical, mental, moral, or emotional health. She requests that we lift the restrictions.

¶ 166 Section 607(a) of the Dissolution Act provides that “[a] parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child’s physical, mental, moral or emotional health.” 750 ILCS 5/607(a) (West 2012). A prohibition on overnight visitation is a restriction on visitation, as is a requirement that visitation be supervised. *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 504 (1993).

¶ 167 The trial court found that the evidence presented “a pattern of alcohol abuse by [Christine] in response to the stress/anger which she has heretofore insufficiently acknowledged.” Accordingly, it determined that it was in K.E.B.’s best interests that Thomas be awarded residential custody “subject to conditions set forth” in a judgment order filed the same day. In its judgment order, the court noted that Christine was not awarded any overnight visitation with K.E.B. except for three

grandparent-supervised visits per year (and no visitation transportation for her, *i.e.*, pick-ups and drop-offs for her parenting time take place at her residence by Thomas or his family member) “due to her demonstrated pattern of alcohol abuse over the past six years, with two incidents in 2012 confirmed by police witness evidence and underscored by a change in custody recommendation by the” GAL. The court ordered that, to address this problem, Christine, at her own expense, secure an alcohol use evaluation report from an approved agency and enroll in any recommended treatment program. Further, the court stated that “mother is at risk and has been warned.” It further stated that “[f]uture conditions of visitation and custody for the parties depend upon their compliance with the terms of this Order.”

¶ 168 The endangerment standard is more onerous than the best-interests standard. *Anderson*, 130 Ill. App. 3d at 688. Although there is authority that a court errs where it explicitly applies the best-interests standard in imposing a visitation restriction (see *id.* (where trial court “did not make the requisite finding that the visitation would seriously endanger” the child’s health, but, rather, found that the visitation restriction was in the child’s best interests, court erred)), there is no requirement of an explicit finding of endangerment (*In re Marriage of Johnson*, 100 Ill. App. 3d 767, 771 (1981) (no “formalistic recital that section 607 ha[s] been complied with” is required; rather, the court need only find that a danger is posed to the child before visitation rights can be restricted)).

¶ 169 We conclude that the aforementioned findings by the court were not sufficient to support imposition of two highly onerous restrictions at issue here (*i.e.*, no overnight visitation as a general rule and, when allowed, only with supervision). The court underscored that it was severely limiting overnight visitations because of Christine’s long-term alcohol abuse. It specifically referenced the car seat incident and the gas station incident that prompted a change in the GAL’s recommendation,

noting that the responding officers testified that Christine appeared intoxicated. However, it failed to specifically find that Christine's condition and behavior posed a danger to K.E.B. such that imposition of the aforementioned restrictions was warranted. We note that Lonergan, whose revised recommendation the trial court adopted, herself further recommended that Christine have *more* than the standard visitation. The court made no findings as to why it was deviating from her recommendation. Further, it appears that the court, if anything, applied the best-interests standard in its written findings, where it noted that it was in K.E.B.'s best interests that Thomas be awarded residential custody "subject to the conditions" in the judgment order entered the same day. Accordingly, we reverse and remand for the court to apply the proper standard in determining Christine's visitation rights. *Heldebrandt v. Heldebrandt*, 251 Ill. App. 3d 950, 957 (1993) (reversing and remanding for application of proper standard).

¶ 170

III. CONCLUSION

¶ 171 For the foregoing reasons, the judgement of the circuit court of Kane County is affirmed in part and reversed in part and the cause is remanded.

¶ 172 Affirmed in part and reversed in part; cause remanded.