2019 IL App (2d) 190259-U
No. 2-19-0259
Order filed July 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re H.M.H., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 17-F-186
	)	
(Douglas H., Petitioner-Appellee, v. Jessica	)	
Oglesby, Respondent, and Shennondoah	)	Honorable
Oglesby, Third-Party Respondent/Guardian	)	Neal W. Cerne,
-Appellant.)	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in terminating Shennondoah's guardianship of H.M.H. It also did not err in allocating all decision-making responsibilities and almost all parenting time to Douglas. Therefore, we affirmed.

¶ 2 Third-party respondent/guardian Shennondoah Oglesby appeals from the trial court's order terminating her guardianship of her granddaughter, H.M.H., and awarding full custody and decision-making responsibilities to petitioner Douglas H., who is H.M.H.'s father. Shennondoah argues that the trial court erred in its ruling, in barring evidence against Douglas at trial, and in allowing testimony by the guardian *ad litem*. In her reply brief, she also argues that the trial court lacked subject matter jurisdiction over the case. We affirm.

¶ 3 I. BACKGROUND

¶ 4 H.M.H. was born on January 17, 2013, to Jessica Oglesby, who is Shennondoah's daughter. On March 27, 2017, Douglas filed a petition to establish parentage, naming Jessica as the respondent. He sought parental responsibilities and parenting time with the child. The trial court adjudicated Douglas to be H.M.H.'s father on May 17, 2017. The same day, it appointed a guardian *ad litem* (GAL) for H.M.H.

¶ 5 Subsequently, on June 16, 2017, Douglas filed a motion for H.M.H.'s return. He noted that on June 6, 2017, Shennondoah was given guardianship of H.M.H. in Cook County pursuant to a petition for guardianship. He alleged that his right to residential custody of H.M.H. was superior to Shennondoah's; that her petition did not allege that he was unfit to care for the child; and that it was in H.M.H.'s best interest that he be given residential custody.

¶ 6 On June 27, 2017, Shennondoah filed a petition to be joined as a third party in this case, and to transfer venue to Cook County. She alleged that H.M.H. had been residing with her since birth, and she noted that she had recently been appointed her guardian. Shennondoah alleged that she and H.M.H. resided in Cook County and that Jessica had also resided with them until two months ago, when Jessica moved to Missouri to obtain treatment for substance abuse addiction. She argued that the Du Page County parentage petition and the Cook County guardianship petition both addressed the residence, custody, and parenting time regarding H.M.H., and that the only tenable connection to Du Page County was that Douglas resided there.

¶ 7 Shennondoah attached to the petition the order of the Cook County trial court, dated June 6, 2017. It appointed her guardian of H.M.H, over Douglas's counsel's objection over venue. The order stated that the trial court had heard statements from a Department of Children and Family Services (DCFS) caseworker and the parties. It found that DCFS had "presented

concerning evidence" about H.M.H.'s safety and that DCFS had attempted to contact Douglas, with no response from him. Specifically, DCFS reported that Douglas and Jessica "were involved in a domestic violence relationship," that Douglas had "a criminal history of drug trafficking and domestic violence," and that H.M.H. had lived in Shennondoah's home since birth. DCFS reported safety concerns about Douglas "based on his history and [Jessica's] fear and report of his past." The Cook County trial court concluded by stating that it found that "DCFS, at this time, does not believe [Jessica] or [Douglas] are able to care for the minor."

¶ 8 In Douglas's answer to Shennondoah's petition to transfer venue, he stated, among other things, that his parentage action was filed on March 27, 2017, before the guardianship case was filed on April 17, 2017. He asserted that, pursuant to local court rules, the guardianship case had to be consolidated into the parentage case.

¶ 9 On August 18, 2017, the trial court granted Shennondoah's request to be joined as a third party, and it denied her motion to transfer venue, without prejudice. The trial court consolidated the guardianship case with the instant case on September 22, 2017. On October 16, 2017, Shennondoah filed a counter-petition seeking parental responsibilities and other relief.

¶ 10 Douglas filed a petition to terminate guardianship on March 15, 2018. Douglass argued that there was a "lack of standing" for the guardianship order, and he alternatively argued that there had been a substantial change in circumstances since the entry of that order.

¶ 11 On November 19, 2018, Shennondoah and Jessica filed a joint motion that sought, among other things, to appoint a new GAL. They alleged that since her appointment, the GAL had met only one time with H.M.H. at Shennondoah's home, that the visit was brief, and that she made no effort to follow up with Shennondoah or H.M.H. The motion was entered and continued to a subsequent date, but the written order from the subsequent hearing did not address the subject,

and the record lacks a report of proceedings from that date. The GAL subsequently sought to be discharged due to having been selected as an associate circuit court judge, but she later withdrew the motion.

¶ 12 A. Trial

¶ 13 The trial took place on March 7 and 8, 2019, and the GAL testified as follows. She completed her investigation before the trial date that was set for September 2018, and she had not actively investigated the case since then. The GAL believed that the case was delayed due to "various tactics." As part of her investigation, she visited Douglas's home and found it clean and appropriate for a child of H.M.H.'s age. Douglas's mother, Peggy, owned the home. The GAL had visited Shennondoah's house and also found it to be clean and appropriate for H.M.H. To her knowledge, Shennondoah's ex-husband David also lived in the house, Jessica lived there sporadically, and a sister of Jessica also lived there. The GAL had spoken to David briefly at the house and additionally at the courthouse. David was negative about Douglas and was extremely aggressive in his manner; David had sworn at her in the courthouse and followed her down the hallway. The GAL had met with H.M.H. twice, had met with Shennondoah, Peggy, and Douglas, and had conferred with "all of the various counsels in this case several times."

¶ 14 The GAL met with Douglas and H.M.H. at a local McDonald's. They appeared well-bonded. H.M.H. was laughing with, playing with, and hugging Douglas, who was very warm and kind towards H.M.H. The GAL had also reviewed hundreds of documents, including DCFS reports, copies of text messages, and Facebook messages. There was a 2016 DCFS report stating that David had seen Jessica shooting heroin in the home, and he called DCFS. DCFS thereafter

made a finding of "indicated" against Jessica.[1] To the GAL's knowledge, DCFS had never "indicated" Douglas.

¶ 15 When the GAL met with H.M.H. in Shennondoah's home, H.M.H. immediately stated that she hated Douglas and did not want to live with him. When the GAL asked why, H.M.H. said that Douglas hit Jessica. The GAL asked why she thought that, and H.M.H. said that Shennondoah and Jessica had told her so. When asked whether she had ever seen that occur, H.M.H. replied in the negative. The GAL would not have asked H.M.H. where she wanted to live, based on her young age. The GAL found that petitions for order of protection had been filed against Douglas, but that no orders were issued. Douglas had been incarcerated twice and was in jail during Jessica's pregnancy. The parties disputed where Jessica and H.M.H. lived from 2015 to 2017, with both sides claiming to have been completely involved in H.M.H.'s life.

¶ 16 H.M.H. began counseling at the GAL's request. The GAL denied that H.M.H.'s anxiety and other issues were related to visiting Douglas, but rather were due to H.M.H. "being raised in a very difficult environment." Specifically, her parents had a great deal of animosity towards each other, David was causing a lot of problems and not encouraging a relationship with Douglas, and Shennondoah was acting in the role of the mother.

¶ 17 The GAL recommended that H.M.H. reside primarily with Douglas, and that he have all final parental decision-making authority. She further recommended that Shennondoah have parenting time every other weekend, and that David have no contact with H.M.H. Based on her interviews with the parties and a review of the case's proceedings, it appeared that the parties had been unable to reach any agreement, despite her best efforts and the trial court's

[1] An "indicated" designation means that a report of abuse or neglect was supported by credible evidence. *In re K.S.*, 365 Ill. App. 3d 566, 571 (2006).

recommendations. Therefore, she believed that if the trial court granted joint decision-making authority, it would likely result in a lot of future litigation. Also, the GAL believed that Douglas had superior parental rights over Shennondoah, and the GAL was looking to see if he was capable, willing, and able to take care of H.M.H. The GAL believed that Jessica was still struggling with a serious addiction problem, and in light of that fact, and because Jessica had turned over guardianship to Shennondoah, the GAL recommended that Jessica's parenting time with H.M.H. be closely supervised.

¶ 18 Douglas provided the following testimony. He was almost 31 years old. Prior to filing the petition for parentage, Jessica and H.M.H. lived in his residence for about two years. Before that time, they lived with him "on and off, but basically the majority of the time [H.M.H.] was alive." He and Jessica later separated, and she moved out in December 2016. Since then, H.M.H. had been living exclusively with Shennondoah. Douglas was not present in court when the guardianship was established, was not given notice of the date and time of the hearing, and did not consent to the guardianship being entered. A temporary visitation order currently provided him visitation with H.M.H. every other weekend.

¶ 19 He and H.M.H. enjoyed a lot of outdoor activities together, such as taking H.M.H. to ride a toy motorcycle, going to the park, going fishing, and going to McDonald's PlayPlace. They also watched movies, played video games, and cooked together. H.M.H. had a dedicated playroom in the basement with dolls, Legos, Play-Doh, play tents, and other toys. Several neighbors had children with whom H.M.H. played. She had clothes appropriate for all seasons, bathed before bed, and brushed her teeth twice per day. Douglas had health insurance for H.M.H. Douglas lived in Peggy's residence, but he gave her money to help with bills. She also helped care for H.M.H.

¶ 20 Douglas graduated high school in 2005. After that, he worked at a "small diesel place" full-time for six months before being laid off. He then worked full-time at Quizno's for a little less than one year before quitting. From 2007 to 2011 he did "smalltime car stuff," and made $500 or $660 during "good week[s]."

¶ 21 Douglas's driver's license was suspended in 2009 or 2010 because he was driving a motorcycle without the proper license. In 2012, just before Hannah was born, he was charged with possession of a controlled substance, aggravated driving under the influence of alcohol, and driving on a suspended or revoked license. Douglas pleaded guilty. In October 2013, he was again charged with the same vehicle-related crimes. Douglas was imprisoned in December 2013 and paroled in September 2014, then was again in prison from December 2014 until he was released in February 2015. The trial court ruled that only convictions during the time Jessica was pregnant and onward were relevant.

¶ 22 Douglas worked at RR Donnelly as a data entry specialist the previous year, but he then quit to do a temporary job involving press machine stamping. When that job ended, he again worked as a self-employed motorcycle mechanic. He also helped a friend do interior/exterior painting when the friend needed assistance. He earned about $25,000 per year. Douglas did not have a bank account because of "collections"; he owed about $7,000 related to "not paying the fines for [his] license." He did not have a credit card but used a preloaded card. Douglas had never paid child support, and he had given money to Jessica but not Shennondoah. However, before the instant case, Shennondoah had never requested child support.

¶ 23 Douglas did not currently use drugs or drink alcohol in excess, and he had never been convicted of drug trafficking. Douglas had been investigated twice by DCFS, when he initiated this case in 2017 and three months prior to trial, but he was never indicated by DCFS.

¶ 24 Peggy H., Douglas's mother, testified as follows. She was 70 years old. H.M.H. and Jessica lived in her house after H.M.H. left the hospital, "almost through the end" of 2014. They lived there "a good deal of the time" in 2014 and then came back in 2015. In 2016, they were "moving in and out." After Jessica moved to Missouri, Shennondoah provided Peggy once-a-week visitation with H.M.H. at McDonald's until the trial court entered a visitation order in September 2017. Peggy did not tell Douglas about that visitation because he "was going through a very difficult breakup." From the time that Jessica moved to Missouri, Peggy and Shennondoah had a cordial relationship and talked to each other on an on-going basis about H.M.H.

¶ 25 Peggy was H.M.H.'s "bath person" and "hair person." Douglas sometimes tried to do her hair, and he helped her with brushing her teeth. Douglas and H.M.H. spent a lot of time together, and H.M.H. had "a blast" with him. She was "happy all the time," though she was like any child and had "her moments." H.M.H. had her own room in Peggy's house, which was located near several parks, and the school district was highly-rated. H.M.H. had many clothes and toys in the house and played with the neighbors' children. Douglas did not have a driver's license, but Peggy worked from home and was able to help him transport H.M.H. Douglas paid for the food for the household and did all of the cooking.

¶ 26 Shennondoah provided the following testimony. She was 47 years old and lived about five minutes away from Peggy. She and her husband, David, had begun divorce proceedings in 2015 due to his drinking problem, and the divorce was later finalized. However, they had reconciled and resumed living together in September 2016, after David stopped drinking. He had maintained his sobriety for almost four years. H.M.H. had her own bedroom in the house with toys and books. Their younger daughter, Megan, also lived in the house during breaks from college. Jessica had relocated to Missouri permanently in 2017.

¶ 27 Shennondoah and David both worked full-time. David and H.M.H. had a very close relationship, and he supervised H.M.H. alone at times. H.M.H. was enrolled in kindergarten, and Shennondoah transported her to and from school. H.M.H. was not signed up for any extracurricular activities.

¶ 28 Jessica told Shennondoah that she was pregnant in 2012. H.M.H. was born almost three months early, and Shennondoah took Jessica to the hospital for the birth. Jessica was in the hospital for about two weeks after the birth, and H.M.H. was there for 43 days. Shennondoah visited them daily, except when she had the flu. When H.M.H. was released from the hospital, she and Jessica lived with Douglas for a couple of weeks. "There was a lot of back and forth" between the residences in 2013 and 2014, but Jessica was spending the majority of the time at Douglas's house. Jessica permanently left Douglas's house towards the end of the year in 2015, and H.M.H. had lived with Shennondoah since that time. Shennondoah had provided for all of her needs since then, including medical insurance and related costs, and believed that it was in H.M.H.'s best interest to remain with her. Shennondoah believed that H.M.H. should have a relationship with both of her parents, and Shennondoah was willing to facilitate that relationship. Jessica visited about one weekend a month, and Shennondoah or another family member supervised the visits. Jessica and H.M.H. also talked to each other a lot over FaceTime. Shennondoah admitted that there were times when Shennondoah "requested" that Jessica leave the house between 2015 and 2017, and that H.M.H. left with Jessica those times.

¶ 29 When court-ordered visitation began with Douglas in September 2017, H.M.H. became afraid of the dark, did not want to be left alone, and began wetting the bed. The GAL recommended counseling, and Shennondoah took H.M.H. to the weekly appointments. H.M.H. was being treated for emotional dissociation and anxiety, and her condition had improved.

H.M.H. would occasionally come and sleep in the bed with Shennondoah and David. H.M.H. was involved in church, and Shennondoah had a lot of musical instruments and art supplies in the home that H.M.H. used. H.M.H. was very happy and felt secure and comfortable in Shennondoah's home.

¶ 30 Shennondoah admitted that in February 2015, she filed a petition for an order of protection against David. The petition stated that on April 6, 2013, David insulted and abused Shennondoah and responding police officers, threatened to commit suicide, and had access to firearms. The petition stated that he was ordered to turn in his FOID card and did so on June 18, 2014. The petition further stated that on February 22, 2015, David tore a bedroom door or frame off the wall, pushed Megan against the wall, was overly aggressive, threatening, and menacing, and was often under the influence after heavy alcohol consumption. The petition stated that Shennondoah and Megan fled the house and were fearful, under duress, and anxious. At trial, Shennondoah testified that she signed the petition without reading it, but that she never said David assaulted her. Rather, he was harassing her through text messages. Shennondoah later testified that he had also threatened her and family members when he was drunk. Shennondoah testified that she did not list H.M.H. on the petition because she did not have guardianship of her at the time.

¶ 31 Shennondoah signed an affidavit in support of a summons and order of protection, which stated that David still had access to some weapons and had threatened in voicemail recordings to shoot Shennondoah, and that Shennondoah feared for her own and Megan's safety. An emergency order of protection was issued in response to the petition. In February 2015, Jessica and H.M.H. were living in the house, though Shennondoah left the residence for a few months. A plenary order of protection was issued on September 18, 2015.

¶ 32 In her petition for guardianship, Shennondoah did not list any allegations regarding Douglas because he "wasn't in the picture." Jessica signed a "short-term" guardianship form in favor of Shennondoah. Jessica had been indicated by DCFS after David found her getting high with a friend in the bathroom, and called the police. H.M.H. was asleep at the time.

¶ 33 B. Trial Court's Order

¶ 34 The trial court issued a written order allocating parental responsibilities on April 3, 2019, which we summarize. As the natural parents, Jessica and Douglas were presumed to have superior rights to the custody and care of their child. The right was not absolute, but it created a presumption favoring the natural parent over a nonparent, even where the nonparent has standing to seek custody. Jessica did not participate in the proceedings, was not currently seeking parenting time, and was not willing and able to care for H.M.H. On the other hand, Douglas was willing and able to care for her, was self-employed and had housing through Peggy, did not suffer from any condition that would impair his ability to care for her, and did not have any adverse findings against him from DCFS. "The nonviolent criminal past of Douglas [had] no impact upon his ability to parent, nor [did] it endanger the minor child."

¶ 35 In looking at the factors considered in allocating parenting time, both Shennondoah and Douglas sought parenting time. H.M.H. had not expressed a preference for either party. She had stated to the GAL that she hated Douglas and wanted to live with Shennondoah, but the GAL found the volunteered statement to be unusual and not supported by any rational basis. For the 24 months preceding the commencement of the paternity action, if was difficult to determine who was H.M.H.'s primary caregiver. Her life was chaotic during that time, and she moved between houses. "[C]onsidering Jessica's condition[,] there was probably further turmoil." For the prior two years, Shennondoah was the primary caretaker, and H.M.H. was comfortable in her living

arrangements. H.M.H. had a positive relationship with both parties, and the GAL reported observing positive interactions with both Shennondoah and Douglas. They lived only about three miles apart, which promoted parenting time. There were no mental health issues raised as to either of them, no allegations of physical violence directed by them towards H.M.H. or other household members, no allegations of being a sex offender, and there was no evidence to support restricting their parenting time. However, Jessica's issues with drug abuse would need to be addressed before she could obtain parenting time. Both Shennondoah and Douglas appeared to put H.M.H.'s best interest above their own and had the ability and willingness to facilitate a relationship between the other party and H.M.H. Douglas was the natural parent, had been involved with H.M.H., and had a positive relationship with her, as observed by the GAL. He had not acquiesced in Shennondoah being the custodian of his child.

¶ 36 Looking at the factors considered in allocating significant decision-making responsibilities, H.M.H. had not expressed a preference on this issue, nor would her opinion be relevant considering her young age. H.M.H. did not have mental health issues. The GAL indicated that she was well-adjusted to her home, school, and community while living with Shennondoah, who had been the primary decision-maker since being appointed guardian in 2017. The parties each expressed a desire to be involved in decisions affecting H.M.H., but their relationship was only through H.M.H., and they did not have a common bond that would allow for effective joint decision-making. There was no indication that they shared the same aspirations or values/belief systems necessary to work as a team in making decisions for H.M.H. The parties were not sex offenders, had not engaged in any conduct that would endanger the child, nor was there physical violence or threat of physical violence directed at H.M.H. or other household members. Both parties had demonstrated a willingness to encourage a close and continuing

relationship between each other and the child, as Shennondoah had arranged visitation with Peggy, and the parties had cooperated in facilitating parenting time. Again, Douglas was the natural parent, had been involved with H.M.H., and had a positive relationship with her, as observed by the GAL, and had not acquiesced in Shennondoah being H.M.H.'s custodian.

¶ 37 Based on these findings, the trial court terminated Shennondoah's guardianship. Douglas was to have all parenting time with H.M.H., with the exception that Shennondoah would have parenting time the second weekend of each month from Friday at 6 p.m. to Sunday at 6 p.m. Jessica would not have parenting time absent filing a motion with the court. During their respective parenting times, Shennondoah and Douglas would each have sole responsibility for making routine decisions for H.M.H., and for emergency decisions affecting her health and safety. Douglas was to make all major decisions concerning the child, including, but not limited to: (1) public education through high school; (2) medical and dental issues; (3) religion; (4) extracurricular activities; (5) child care and after-school care; and (6) summer camp. Either party or parent had the right to make reasonable electronic or telephonic contact with H.M.H.

¶ 38 Shennondoah timely appealed.

¶ 39 II. ANALYSIS

¶ 40 A. Jurisdiction

¶ 41 We start by considering Shennondoah's argument, raised in her reply brief, that the trial court lacked subject matter jurisdiction over this case. Normally, an appellant forfeits an argument not raised in the appellant's initial brief, pursuant to Illinois Supreme Court Rule 341(h) (eff. May 25, 2018). However, the alleged absence of subject matter jurisdiction is an issue that may be raised at any time. *Veazey v. LaSalle Telecommunications, Inc.*, 334 Ill. App. 3d 926, 933-34 (2002).

¶ 42 Shennondoah argues that the Cook County circuit court had jurisdiction over H.M.H.'s guardianship because H.M.H. was residing in Cook County, and once a minor is found to be abused, neglected, or dependent and placed in DCFS custody, the circuit court maintains jurisdiction over the case. See *In re Shawn B.*, 218 Ill. App. 3d 374, 380 (1991). Shennondoah maintains that "DCFS had custody over H.M.H. by virtue of its investigation in May and June 2017."

¶ 43 Shennondoah's argument is without merit. Under the Juvenile Court of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2016)), there is a detailed series of steps a trial court must go through, including holding an evidentiary hearing (see *id.* § 2-21), before declaring that a minor is abused, neglected, or dependent. The court thereafter holds a dispositional hearing to determine whether it is in the minor's best interest to be made a ward of the court, with guardianship to be given to DCFS. See *id.* § 2-22. Here, there is no indication that a petition to declare H.M.H. abused, neglected, or dependent was ever filed, much less than guardianship or "custody" of her was ever given to DCFS. As such, Shennondoah's jurisdictional argument fails.

¶ 44 B. Termination of Guardianship

¶ 45 Shennondoah next argues that the trial court erred in terminating her guardianship over H.M.H. She maintains as follows. Before H.M.H.'s birth, Douglas "had numerous run-ins with the law." His driver's license was suspended in 2009 and later revoked. In 2012, he pled guilty to possessing a controlled substance, aggravated DUI, and driving on a suspended or revoked license. He was incarcerated the last three or four month of Jessica's pregnancy and posted bail when she went into labor.

¶ 46 After H.M.H's birth, Douglas was imprisoned from December 2013 to September 2014 and then again in December 2014 to either February or April 2015. He was unemployed for

some time after his release. Jessica and H.M.H. moved out of Douglas's residence in December 2015, and thereafter H.M.H. resided primarily with Shennondoah. Douglas made no effort to contact or visit H.M.H. while she lived with Shennondoah.

¶ 47 Shennondoah further argues that Douglas failed to show that a substantial change in circumstances occurred after she obtained guardianship over H.M.H. on June 6, 2017. She contends that he did thereafter obtain employment for a short period of time, but then went back to servicing motorcycles in the garage and doing odd jobs. According to Shennondoah, the only other change in his situation was court-ordered visitation with H.M.H. She argues that Douglas still lives in his mother's home and is also dependent on her for some bills, for transportation, and for assistance in caring for H.M.H. She notes that he owes about $7,000 in fines due to issues with his driver's license, and he does not have a bank account because of the debt.

¶ 48 Douglas responds that his petition to terminate the guardianship can be construed as a challenge to that order as void or based on fraud. He alternatively argues that he proved by a preponderance of the evidence that a material change in circumstances had occurred since the entry of the guardianship order. He asserts that because the order stated that that he was not able to care for H.M.H., but also stated that he had no contact with DCFS, he needed to show only that he was able and willing to care for her as a material change in circumstances. Douglas also argues that the guardianship order's plain language shows that it was meant to be short-term, as it stated that DCFS "at this time" did not believe that H.M.H.'s parents could care for her. Douglas argues that he provided evidence of a nurturing home, stable family life, lack of any drug use, and honest desire and ability to care for H.M.H. He maintains that in addition to his own testimony, Peggy and the GAL testified that he was a fit parent and able to carry out his day-to-day parental functions. According to Douglas, once the trial court found that he was a fit

parent, and that the other biological parent was not, guardianship was no longer appropriate. He cites *In re M.M.*, 2016 IL 119932, where the supreme court held that section 2-27(1) of the Juvenile Court Act (705 ILCS 405/2-27(1) (West 2012)) did not authorize placing a ward of the court with a third party without a finding of parental unfitness, inability, or unwillingness to care for the minor.[2]

¶ 49 Douglas additionally argues that Shennondoah has a pattern of misleading the court by making false statements at trial and stating additional falsities in her appeal. He notes that in February 2015 she signed a verified petition that David shoved Megan against the wall and that she feared for their safety, at a time H.M.H. was allegedly living with her. He argues that, however, at trial she testified that her order of protection was based only on text message harassment, and that H.M.H. sometimes slept in bed with her and David. Douglas maintains that Shennondoah also represented to the Cook County circuit court that H.M.H. lived with her since birth, whereas she testified at trial that H.M.H. had gone back and forth between the homes. Douglas maintains that Shennondoah would say or do anything to "get a leg up in the legal system," and that the trial court was in the best position to assess her credibility.

¶ 50 A guardianship may be terminated as follows:

> "Upon the filing of a petition by a minor's living, adoptive, or adjudicated parent whose parental rights have not been terminated, the court shall discharge the guardian and terminate the guardianship if the parent establishes, *by a preponderance of the evidence, that a material change in the circumstances of the minor or the parent has occurred since the entry of the order appointing the guardian*; unless the guardian

[2] We again note that H.M.H. was never adjudicated a ward of the court under the Juvenile Court Act.

> establishes, by clear and convincing evidence, that termination of the guardianship would not be in the best interests of the minor. In determining the minor's best interests, the court shall consider all relevant factors including:
>
> (1) The interaction and interrelationship of the minor with the parent and members of the parent's household.
>
> (2) The ability of the parent to provide a safe, nurturing environment for the minor.
>
> (3) The relative stability of the parties and the minor.
>
> (4) The minor's adjustment to his or her home, school, and community, including the length of time that the minor has lived with the parent and the guardian.
>
> (5) The nature and extent of visitation between the parent and the minor and the guardian's ability and willingness to facilitate visitation." 755 ILCS 5/11-14.1 (West 2016).

The reason for the requirement of a material change in circumstances is that, absent such a change, the trial court would be ruling on the exact issue that was previously decided. *In re Estate of Andre T.*, 2018 IL App (1st) 172613, ¶ 29. A trial court's determinations relating to custody will not be disturbed unless they are against the manifest weight of the evidence. See *In re Estate of K.E.S.*, 347 Ill. App. 3d 452, 461 (2004). A decision is against the manifest weight of the evidence where the opposite conclusion is apparent or the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 51 Although the trial court did not explicitly address the issue of a change in circumstances, by terminating the guardianship it implicitly found that Douglas had met his burden of showing

such a change. This finding was not against the manifest weight of the evidence. The June 6, 2017, guardianship order itself was clearly meant to be temporary, as Shennondoah admitted at trial that Jessica signed a "short-term" guardianship form, and the guardianship order stated that DCFS "at this time" did not believe that H.M.H.'s parents were able to care for her. The trial here took place almost two years later, in March 2019, which is a significant passage of time. The guardianship order further stated that DCFS reported safety concerns about Douglas but had not been able to contact him. Accordingly, we agree with Douglas that evidence that he was willing and able to care for H.M.H. represented a substantial change in circumstances. Further, Douglas testified that he had been investigated twice by DCFS since initiating his case, including three months before trial, but was not indicated. The trial court specifically found that Douglas did not have any adverse findings against him from DCFS; that Douglas's criminal past was nonviolent and had no impact on his ability to parent H.M.H., nor did it endanger her; and that Douglas was self-employed and had housing through Peggy.

¶ 52 Shennondoah argues that even if Douglas established a substantial change in circumstances, she overcame the presumption of the superior-rights doctrine that favors him as the natural parent. She argues that she had already been appointed H.M.H.'s guardian, had Jessica's consent to the guardianship, and had been H.M.H.'s primary caregiver for the previous two years. She asserts that she further overcame the doctrine because: (1) Douglas and Jessica are not married; (2) Douglas did not take advantage of opportunities to see H.M.H. before the guardianship; (3) he did not attend the guardianship hearing or cooperate with DCFS; (4) he has seen H.M.H. only pursuant to court-ordered visitation; (5) he shares visitation time with his mother and friends and neighbors with children, thereby detracting from his bonding time with H.M.H.; (6) he never paid child support; (7) he has his mother bathe H.M.H.; (8) Douglas is

financially supported by his mother; (9) he does not have a driver's license; and (10) he does not have a job that provides consistent income. Shennondoah maintains that, in contrast, she had provided H.M.H. with a home since 2015; has a steady and consistent income; has paid all of H.M.H.'s expenses; has opened a savings account for her; has taken her to religious services and classes; has enrolled her in and transported her to kindergarten; and has taken her to court-ordered counseling.

¶ 53 Shennondoah relatedly argues that she established by clear and convincing evidence that terminating her guardianship of H.M.H. is not in H.M.H.'s best interests. See 755 ILCS 5/11-14.1 (West 2016). Looking at the relevant factors (see *supra* ¶ 50), for the first factor, being the interaction and interrelationship of the minor with the parent and members of the parent's household, Shennondoah argues that the GAL testified that H.M.H. appeared well-bonded to Douglas but told her that she did not want to live with him. The GAL further testified that it would be in H.M.H.'s best interest to have ongoing contact with Shennondoah. For the second factor, the ability to provide a safe, nurturing environment, the GAL found both residences to be appropriate, though Shennondoah argues that the GAL did not independently investigate Douglas's financial situation. For the third factor, the relative stability of the parties and the minor, Shennondoah points out that the GAL found H.M.H. to be bonded to both parties. For the fourth factor, the child's adjustment to his or her home, school, and community, Shennondoah asserts that prior to the guardianship, H.M.H.'s living situation was inconsistent, whereas the GAL later found that she was well-adjusted to Shennondoah's home. Regarding the last factor, facilitating visitation, Shennondoah points out that the court found that both parties were able to follow the visitation plan and expressed a desire to maintain H.M.H.'s relationship with each other after the proceeding.

¶ 54 Shennondoah cites *In re R.L.S.*, 218 Ill. 2d 428, 444 (2006), for the proposition that a fit parent's custody rights are subservient to the bests interests of the child. She also cites *In re Austin W.*, 214 Ill. 2d 31, 46 (2005), for the proposition that the minor's health, safety, and interests are the guiding principal when issuing an order of disposition regarding the custody and guardianship of a minor ward. Shennondoah argues that the trial court failed to properly weigh the evidence, and that H.M.H.'s best interests should have resulted in the guardianship being upheld and custody remaining with Shennondoah.

¶ 55 Douglas counters that Shennondoah's reliance on *In re R.L.S* and *In re Austin W.* for the contention that the superior rights of the parent are trumped by the child's best interest is misguided, because the supreme court overruled this principle in *In re M.M.* See *In re M.M.*, 2016 IL 119932, ¶ 28 (overruling principle stated in *In re Austin W.* and other cases "that, in child custody disputes, it is not necessary that the natural parent is unfit or has forfeited his or her custodial rights before awarding custody to another person if the best interests of the child will be served."). Douglas maintains that, for the reasons he previously argued, Shennondoah failed to establish that the evidence presented at trial was sufficient to overcome his superior rights as a parent.

¶ 56 The "superior rights" doctrine "is a presumption that parents have the superior right to the care, custody, and control of their children." *In re R.L.S.*, 218 Ill. 2d at 432. It permeates statutory schemes governing family law in Illinois. *In re Scarlett Z.-D.*, 2014 IL App (2d) 120266-B, ¶¶ 20-21. It is reflected in section 11-14.1 in that to terminate a guardianship, a child's parent needs only to establish, by a preponderance of the evidence, that there has been a material change in the circumstances since the creation of the guardianship, whereas the guardian thereafter has the burden to establish by clear and convincing evidence that termination of the

guardianship would not be in the child's best interests. See 755 ILCS 5/11-14.1 (West 2016). Shennondoah's reliance on *In re R.L.S.* to argue that a fit parent's custody rights are subservient to the best interests of the child is misplaced, as the supreme court actually stated that it was wrong in making this statement in previous cases. *In re R.L.S.*, 218 Ill. 2d at 444, 447. In other words, *In re R.L.S.* is authority in opposition to Shennondoah's argument. As Douglas points out, Shennondoah's reliance on *In re Austin W.* is also in error, as the principle that she relies on was subsequently overruled. See *In re R.L.S.*, 218 Ill. 2d at 444, 447; see also *In re M.M.*, 2016 IL 119932, ¶ 28.

¶ 57 With these considerations in mind, we conclude that it was not against the manifest weight of the evidence for the trial court to conclude that Shennondoah failed to show, by clear and convincing evidence, that terminating the guardianship would not be in M.H.M.'s best interests. Although Shennondoah cites the statutory factors in making this assessment, she does not distinguish factors that concern only the parent as opposed to both the parent and guardian. See *supra* ¶ 50 (quoting 755 ILCS 5/11-14.1 (West 2016)). Looking at the first factor, the relationship of the child with the parent and members of the parent's household, the GAL testified that H.M.H. and Douglas were well-bonded. There was also evidence that H.M.H. had a strong relationship with Peggy, to the extent that Peggy arranged to have visitation with H.M.H. through Shennondoah after Douglas and Jessica separated. There was also evidence that H.M.H. had lived with Peggy and Douglas for significant periods of time during her life. Although H.M.H. spontaneously told the GAL that she hated Douglas and did not want to live with him, the GAL found the statement to be unsupported, and testified that she would not have asked H.M.H. about her preference given her young age. For the second factor, the ability of the "parent" to provide a safe, nurturing environment, the GAL testified that Douglas's home was

clean and appropriate for H.M.H. For the third factor, the parties' and minor's relative stability, both parties had been residing in their homes long-term, though H.M.H. moved back and forth for many years. Both parties also maintained an income, recognizing that Douglas was self-employed in an informal manner. The fourth factor, the child's adjustment to home, school, and community, including the length of time that the minor has lived with the parent and the guardian, we note that Shennondoah testified that H.M.H. and Jessica lived with Douglas the majority of the time in 2013 and 2014, and at least parts of 2015. She testified that Jessica moved out at the end of 2015, whereas Peggy testified that they moved in and out in 2016. Shennondoah obtained the guardianship order on June 6, 2017, and H.M.H. lived with her thereafter, but Douglas filed his parentage action on March 27, 2017, showing an effort to resume regular contact with H.M.H. These considerations are also relevant for the fifth factor, the nature and extent of visitation between the parent and the child, and the guardian's ability and willingness to facilitate visitation. The trial court also found that the parties lived near each other and had the ability and willingness to facilitate a relationship between the other party and H.M.H. We note that the GAL testified that H.M.H. was bonded to both parties, but recommended that H.M.H. reside primarily with Douglas.

¶ 58 Regarding the additional considerations that Shennondoah raises (see *supra* ¶ 52), we do not see how the fact that Douglas and Jessica are not married is relevant, as Jessica initially participated in the proceedings but did not ultimately seek custody or parenting time with H.M.H. Shennondoah argues that Douglas did not take advantage of opportunities to see H.M.H. before the guardianship, but there was no evidence that she offered visitation to him (as opposed to Peggy). Further, he sought to have visitation through the legal system, and his abiding by the terms of that visitation cannot be held against him. This is especially true given that he alleged in

a September 19, 2017, pleading that Jessica and Shennondoah were not following the short-term parenting schedule worked out by the GAL. It is also not negative for him to share his visitation time with Peggy, who is the child's grandmother, or allow her to participate in the child's care; Shennondoah herself is similarly H.M.H.'s grandmother, and she further testified that David helped care for H.M.H. It is also not unfavorable for Douglas to allow H.M.H. to play with other children. Though Douglas did not attend the guardianship hearing, his lawyer did attend and object to the proceeding, and there was no evidence introduced at the instant trial regarding Douglas's alleged lack of cooperation with DCFS; instead, Douglas testified that he was investigated twice by DCFS and not indicated. On the question of child support, there was no court order for Douglas to pay child support; Shennondoah admitted that she did not previously request child support; Shennondoah admitted that Douglas had assisted in paying a dental bill for H.M.H.; and Douglas testified that he had given Jessica money. Although the evidence showed that Douglas lived in a house owned by Peggy, the GAL found the home to be appropriate for H.M.H., and it provided stable housing for them. Douglas admitted that he did not have a driver's license, but Peggy testified that she works from home and can transport H.M.H. Finally, though Shennondoah asserts that Douglas does not have a consistent income, he testified that he has been fixing motorcycles long-term and earns about $25,000 per year. In sum, considering all of the circumstances of the case, it was not against the manifest weight of the evidence for the trial court to terminate Shennondoah's guardianship of H.M.H.

¶ 59 C. Allocation of Parental Responsibilities

¶ 60 Shennondoah next contests the trial court's allocation of parental responsibilities, both for decision-making responsibilities and for parenting time. Under the Illinois Parentage Act of 2015, the court may issue an order allocating parental responsibilities or guardianship of the

child, and parenting time privileges with the child, applying the standards of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2016)). 750 ILCS 46/802 (West 2016). If the child is not in the physical custody of a parent, a non-parent may also seek allocation of parental responsibilities. 750 ILCS 5/601.2 (West 2016).

¶ 61 In determining the child's best interests in allocating decision-making responsibilities, the trial court is to consider all relevant factors, including: (1) the child's wishes, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making; (2) the child's adjustment to home, school, and community; (3) the mental and physical health of all involved individuals; (4) the ability of the parents to cooperate to make decisions; (5) the level of each parent's participation in past significant decision-making with respect to the child; (6) any prior agreement; (7) the parents' wishes; (8) the child's needs; (9) the distance between the parent's residences; (10) whether a restriction on decision-making is appropriate; (11) the parents' willingness and ability to encourage a close relationship between the other parent and child; (12) the physical violence or threat of physical violence by the parent against the child; (13) abuse against the child or household member; (14) whether one parent is a sex offender; and (15) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.5 (West 2016). The trial court is in the best position to judge witness credibility and determine the child's best interests, and its allocation of decision-making responsibility will not be disturbed unless it against the manifest weight of the evidence. *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 64.

¶ 62 Based on these factors, Shennondoah argues that: H.M.H. stated that she did not want to live with Douglas; H.M.H. is in a stable environment and enrolled in school and a religious community; Shennondoah has transported her to medical appointments and therapy sessions and

has met all of her needs; the parties live close together and have cooperated in court-ordered parenting time for Douglas; Shennondoah had been the primary decision-maker for the previous two years; Jessica entrusted H.M.H. into Shennondoah's care; and the trial court found that the parties would work towards allowing relationships with the other. Shennondoah additionally argues that the trial court did not explore Douglas's drug and alcohol use and how it affected him, other than not having a driver's license. She argues that it further did not consider that "H.M.H. had never been in the care of Douglas prior to the Court[-]ordered visitations"; that Peggy cared for H.M.H. during visitations; or that H.M.H. was removed from the school and community that she knew, without notice. Shennondoah maintains that, given the best-interests-of-the-child standard, she should have been provided with substantial decision-making authority for H.M.H. She again cites *In re Austin W.*, 214 Ill. 2d at 46, for the proposition that the minor's health, safety, and interests are the guiding principal when issuing an order of disposition regarding the custody and guardianship of a minor ward.

¶ 63 We conclude that the trial court's decision to award decision-making responsibilities to Douglas was not against the manifest weight of the evidence. As stated, *In re Austin W.* has been overruled on the principle for which Shennondoah cites the case. See *supra* ¶ 56. Instead, under the superior rights doctrine, parents are presumed to have the superior right to the care, custody, and control of their children. *In re R.L.S.*, 218 Ill. 2d at 432. Looking at the statutory factors in light of the doctrine, although H.M.H. stated that she did not want to live with Douglas, the GAL testified that the statement was unsupported and not an appropriate consideration given H.M.H.'s age. H.M.H was adjusted to Shennondoah's home because she had been living there for about two years, but she was also comfortable with Douglas, and the GAL testified that his home was clean and appropriate. Though H.M.H. was enrolled in school in Shennondoah's district, it was

her first year there, as she had just started kindergarten. Shennondoah's statement that H.M.H. had never been in Douglas's "care" prior to court-ordered visitation is refuted by the record, as the evidence showed that she had lived with Douglas (with Jessica) for significant portions of her life. Shennondoah had been making the decisions for H.M.H. as her guardian, but Douglas had sought such responsibilities through this action. There were no concerns regarding the parties' mental or physical health; physical violence or abuse, or status as a sex offender; the parties' willingness and abilities to encourage a relationship with the child and the other party; or the distance between the residences. Although Jessica consented to Shennondoah's guardianship, this consideration is tempered by the fact that she consented to just a short-term guardianship, and that Jessica did not testify at trial.

¶ 64 Contrary to Shennondoah's argument that the trial court did not sufficiently consider Douglas's prior drug and alcohol use, the trial court stated that "[t]he nonviolent criminal past of Douglas [had] no impact upon his ability to parent, nor [did] it endanger the minor child." In allocating significant decision-making responsibilities, the court is not to consider a parent's conduct that does not affect the parent's relationship to the child. 750 ILCS 5/602.5(e) (West 2016). Here, the evidence showed that Douglas had not had any legal problems with drug and alcohol for many years. Though he did not have a driver's license, Peggy was able to help him transport H.M.H. Significantly, the GAL recommended that Douglas have all final decision-making authority, and the trial court found that the parties would not be able to effectively share such authority. Based on all of these considerations, we cannot say that the trial court's allocation of parental decision-making responsibilities to Douglas was against the manifest weight of the evidence.

¶ 65 For allocating parenting time, the factors that the trial court is to consider in determining the child's best interests are very similar to those that it is to consider in allocating decision-making responsibilities. See 750 ILCS 5/602.7(b) (West 2016). Shennondoah argues that the trial court erred for the same reasons she asserted as to its allocation of decision-making responsibilities. Likewise, based on our analysis above, it was not against the manifest weight of the evidence for the trial court to award Douglas the vast majority of parenting time. We note that the trial court recognized the importance of H.M.H.'s continuing a relationship with Shennondoah by awarding Shennondoah parenting time one weekend per month, along with reasonable electronic or telephonic contact.

¶ 66 D. Evidentiary Rulings

¶ 67 Last, Shennondoah contests various evidentiary rulings by the trial court. The admissibility of evidence is within the trial court's sound discretion, and we will not reverse its evidentiary determinations unless there is a clear abuse of that discretion. *In re J.V.*, 2018 IL App (1st) 171766, ¶ 204. A trial court abuses its discretion where no reasonable person would agree with its decision. *Enbridge Pipeline (Illinois), LLC*, 2019 IL App (4th) 150544-B, ¶ 48.

¶ 68 Shennondoah contests the trial court's ruling barring evidence of Douglas's convictions before H.M.H.'s birth. She also argues that the trial court erred in not allowing her to question Douglas about his drug use and drug convictions for possession of controlled substances in 2011 and 2012. She cites *In re Estate of Becton*, 130 Ill. App. 3d 763, 771 (1985), where the court stated that the extent of a parent's use of marijuana is relevant to the issue of custody only if it can be shown to affect the parent's mental or physical health, or relationship to the child.

¶ 69 The trial court did not bar evidence of all convictions before H.M.H.'s birth, but rather ruled that only convictions during the time Jessica was pregnant and onward were relevant.

Accordingly, Douglas testified to pleading guilty in 2012 to possession of a controlled substance, aggravated driving under the influence of alcohol, and driving on a suspended or revoked license. The trial court's ruling did not constitute an abuse of discretion, as the focus was on how the crimes affected Douglas's ability to care for H.M.H., so crimes prior to Jessica's pregnancy would have limited relevance, especially considering that H.M.H. was six years old at the time of trial. Moreover, both the statute governing allocation of parental decision-making responsibilities and the statute governing allocation of parenting time state that the trial court shall not consider a parent's conduct that does not affect the parent's relationship with the child. 750 ILCS 5/602.5(e), 602.7(c) (West 2016). As discussed, the trial court ultimately ruled that "[t]he nonviolent criminal past of Douglas [had] no impact upon his ability to parent, nor [did] it endanger the minor child." Finally, Shennondoah's counsel was allowed to make an offer of proof on this subject but did not mention the convictions of which she now complains. See *In re Marriage of Moorthy*, 2015 IL App (1st) 132077, ¶ 70 (where there was no offer of proof as to the excluded testimony, the appellate court considered the issue forfeited).

¶ 70 Shennondoah additionally argues that the GAL did not fulfill her duties to H.M.H. Shennondoah argues that the GAL waited almost three months after her appointment to file an appearance; visited H.M.H. only twice in a two-year-period; did not prepare a written report and only sometimes took case notes; did not independently verify information that was provided to her; and stopped her investigation in September 2018 despite the trial occurring in March 2019. Shennondoah maintains that because the GAL did not properly fulfill her role, the trial court should not have placed as much weight as it did on her findings. Shennondoah contends that the GAL showed bias against her, as demonstrated through her recommendations at trial and the line

item on her fee petition stating that she met with Douglas's counsel for "review of file and trial prep."

¶ 71 We conclude that the trial court did not abuse its discretion in allowing the GAL's testimony at trial. Given the length of the litigation, the time lapse between the GAL's appointment and the entry of her appearance is minimal. In addition to seeing H.M.H. interact with Douglas and Shennondoah, the GAL made a separate visit to Douglas's home, and she also testified to having reviewed hundreds of documents. A GAL is required to either testify *or* submit a written report to the court about the GAL's recommendations in accordance with the child's best interest (750 ILCS 5/506(a)(2) (West 2016)), so it was not necessary for the GAL here to prepare a written report. Although Shennondoah argues that the GAL did not independently verify information, she was able to cross-examine the GAL on this issue. The GAL testified that she stopped her investigation in September 2018 in anticipation of the original trial date; Shennondoah does not discuss what changed in the subsequent months for which the GAL failed to account.

¶ 72 The GAL is charged with providing recommendations to the trial court, so the fact that she recommended Douglas over Shennondoah is not evidence of bias, especially considering the GAL's testimony that she also relied on the superior rights doctrine. As for meeting with Douglas's counsel, the GAL testified that she had conferred with "all of the various counsels in this case several times," and Shennondoah did not cross-examine her further on this subject. We additionally note that the GAL testified that Shennondoah's house was clean and appropriate for H.M.H., that H.M.H. was bonded to her, and that it would be in H.M.H.'s best interests to have ongoing contact with her, which are all contrary to Shennondoah's allegations of bias. As the GAL's role was to opine on the child's best interests, the trial court did not err in relying on her

testimony. We further note that the GAL recommended parenting time with Shennondoah every other weekend, with no contact with David, whereas the trial court awarded Shennondoah parenting time one weekend per month and did not restrict David's presence, demonstrating that the trial court independently arrived at its final ruling.

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 75 Affirmed.