

NOTICE
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2019 IL App (5th) 190055-U
NOS. 5-19-0055, 5-19-0056 cons.
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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

In re B.H. and W.H., Minors)
)
(The People of the State of Illinois,)
)
Petitioner,)
)
v.) Nos. 14-JA-51 & 16-JA-16
)
T.H. and A.C.,)
) Honorable
) Jeffrey A. Goffinet,
) Judge, presiding.
)

In re B.H. and W.H., Minors)
)
(Leona Bone and Tim Bone,)
)
Petitioners-Appellants,)
)
v.) Nos. 14-JA-51, 16-JA-16
)
Illinois Department of Children and Family Services)
and Robin Prakash,)
) Honorable
) Jeffrey A. Goffinet,
) Judge, presiding.
)

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* After hearing evidence, the circuit court properly denied nonrelative foster parents' request for change of custody and guardianship based on best interests of minors.

¶ 2 The petitioners, Leona Bone and Tim Bone, B.H.'s previous foster parents, appeal an order entered by the circuit court of Williamson County denying their petition for change of custody and guardianship. On appeal, the petitioners argue that the circuit court's order, finding it in the best interests of B.H. and his brother, W.H., to remain in the custody of the Illinois Department of Children and Family Services (DCFS), and by extension, the custody of the respondent, Robin Prakash, the minors' great-grandmother, was against the manifest weight of the evidence.

¶ 3 I. BACKGROUND

¶ 4 B.H. and W.H. are the biological children of A.C. and T.H., whose parental rights were terminated on October 7, 2016, and March 30, 2017. B.H. was born on September 27, 2014, and tested positive for substance exposure at birth. On September 30, 2014, the State filed a petition for adjudication of wardship, and on October 1, 2014, pursuant to a shelter care hearing, the circuit court granted DCFS temporary custody of B.H. Thereafter, B.H. was adjudged neglected, made a ward of the court, and guardianship was awarded to DCFS by orders of adjudication and disposition entered on November 12, 2014, and January 8, 2015, respectively.

¶ 5 W.H. was born on April 14, 2016, and also tested positive for substance exposure at birth. On April 18, 2016, the State filed a petition for adjudication of wardship, and on the same date, pursuant to a shelter care hearing, the circuit court granted DCFS temporary custody of W.H. Thereafter, W.H. was adjudged neglected, made a ward of

the court, and guardianship was awarded to DCFS by orders of adjudication and disposition entered on July 20, 2016, and September 2, 2016, respectively.

¶ 6 On August 20, 2015, B.H., who was 11 months old, was placed with Prakash, and on April 27, 2016, W.H., a newborn, was placed with Prakash. On August 18, 2017, CARITAS Family Solutions, a DCFS purchase of service agency that contracted with DCFS to provide case management services, issued a notice to Prakash informing her that B.H. and W.H. were being removed from her home. In response to the children's removal, Prakash requested a clinical placement review challenging the boys' removal. See 89 Ill. Adm. Code 337.20, amended at 36 Ill. Reg. 4388 (eff. Mar. 7, 2012) (clinical placement review is a process by which DCFS reviews a disputed decision to remove a child from the home of a foster family or relative caregiver when the child will be placed in the home of another foster family or relative caregiver). On September 12, 2017, B.H. and W.H. were placed in the home of Shannon and Rebecca Lewey. On November 1, 2017, B.H. was transferred to the home of Leona and Tim Bone. The Lewey family and the Bone family are related to each other.

¶ 7 In the permanency report dated October 27, 2017, Kayelee Pettit, a caseworker for CARITAS Family Solutions, stated that B.H. and W.H. had been removed from Prakash's home because Prakash had improperly administered melatonin, a sleep supplement, to B.H. during a sleep study on July 31, 2017. Pettit further noted that Prakash, formerly known as Hill, was convicted of prostitution in 1993 (People v. Hill, 92-CF-176 (Mar. 17, 1993)) and that Prakash had failed to disclose the conviction in licensing paperwork.

Pettit noted that Prakash was appealing the children's removal from her home and had a clinical placement review scheduled for November 20, 2017.

¶ 8 On December 12, 2017, DCFS issued a final clinical decision pursuant to Prakash's services appeal and concluded that it was in the best interests of the children to return to Prakash's home. On December 14, 2017, the State filed a motion for an emergency temporary order to prevent DCFS from returning B.H. and W.H. to Prakash's home. The State alleged that B.H. had been assessed as special needs, for which Prakash was not licensed. The State further alleged that B.H.'s behavior had improved since his removal from Prakash's home. The State alleged that B.H.'s home was located within 10 minutes of W.H., who was also "doing well in his placement." The State alleged that the Prakash home was not approved as an adoptive home because of a prior conviction that she failed to reveal. Pursuant to the State's motion, the circuit court entered an emergency temporary order preventing DCFS from placing the minors into Prakash's home and setting the matter for hearing. However, on February 1, 2018, the circuit court vacated its emergency temporary order. Accordingly, Prakash was denied visitation with the boys from August 2017 until February 2018.

¶ 9 On January 5, 2018, Prakash filed a petition to intervene in the cases, and the circuit court granted her petition. On February 20, 2018, the court appointed special advocate (CASA) volunteer, Patricia M., submitted her report to the circuit court. In the report, she opined that Prakash's lack of truthfulness and the boys' substantial progress since being removed from Prakash's care led to the conclusion that the children's best interests were served by not returning them to Prakash's care. She recommended that

W.H. and B.H. remain in the Bone and Lewey homes. On March 23, 2018, Leona and Tim filed a motion to intervene and a motion for a temporary restraining order to stay further visits between B.H., W.H., and Prakash, arguing that placement with Prakash was not in the boys' best interest. Likewise, on April 3, 2018, the boys' guardian *ad litem* (GAL) filed a motion for a temporary restraining order to suspend visitation with Prakash, and DCFS filed its response. On May 4, 2018, Leona and Tim filed a petition for custody and guardianship of B.H., and Rebecca and Shannon filed a petition for custody and guardianship of W.H. On May 24, 2018, DCFS filed a response objecting to the petitions for custody and guardianship. In its response, DCFS argued, *inter alia*, that the Bones and Leweys lacked standing to file pleadings in the cases. On June 4, 2018, the circuit court denied the standing objections raised by DCFS and Prakash, noting that the primary issue involved whether to remove DCFS as the minors' custodian or guardian and not whether a specific placement was appropriate. In August 2018, B.H. and W.H. were returned to Prakash's home.

¶ 10 A. Hearing on Petitions for Custody and Guardianship

¶ 11 1. *Prakash*

¶ 12 On September 7, 2018, November 28, 2018, November 29, 2018, and November 30, 2018, the circuit court heard evidence on the petitions for custody and guardianship. At the hearing, Prakash testified that she was 59 years old, lived in Carmi, and received monthly disability income due to asthma. Prakash testified that in 2014, she lived in Maryland, and A.C. contacted her to request that she return to Illinois to care for A.C.'s

children. Prakash testified that she was working part-time in retail and as a nanny for two children, but she returned to Illinois, where B.H., and later W.H., were placed in her care.

¶ 13 Prakash acknowledged that she had been convicted for prostitution in 1992 and had failed to report the conviction to DCFS. Prakash also acknowledged that her driver's license was revoked in 1993 because she was convicted of two driving under the influence charges and that she had not completed the procedures to reinstate her license in Illinois. Prakash testified that she and the boys utilized the Rides Mass Transit service for transportation.

¶ 14 Prakash testified that if she needed assistance, her church congregation was available to help. Prakash testified that her religious affiliation was Baptist and that she attended Cherry Street Baptist Church in Carmi. Prakash testified that one of the deacons of the church and his wife transported her and the boys to and from church. Prakash further testified that the boys' grandfather, Bobbie Cheek, who was also her eldest son, had notified her that he was available to help with B.H. and W.H. Prakash testified that the boys' grandfather on their father's side, Stacy Hill, had also offered to help and visit them. Prakash testified that if she suffered a serious illness, one of the two grandfathers would care for B.H. and W.H.

¶ 15 Prakash testified that she understood B.H. faced difficulties because his mother lacked prenatal care, he was born with narcotics in his system, and he was previously placed in foster homes. Prakash testified that she expressed concern to the caseworkers to ensure help was available to him. Prakash testified that she also took B.H. to different children's hospitals and specialists to gather assistance for B.H. Prakash testified that

prior to B.H.'s removal, his behaviors were improving. Prakash testified that B.H. exercised more self-control, his listening improved, and he interacted with W.H. more positively.

¶ 16 Prakash testified that she took B.H. for a sleep study in July 2017 because he experienced difficulty sleeping. Prakash testified that the sleep technicians waited for over two hours for B.H. to fall asleep and that the technician requested that B.H. take one milligram of melatonin, in addition to the state-approved one milligram of melatonin already given him. Prakash identified a letter written by Dr. James Kempt, the medical director of sleep medicine, indicating that the sleep technologist and respiratory therapist suggested a second dose of melatonin be administered to B.H. due to his prolonged wakefulness. Prakash testified that she also administered melatonin to B.H. daily to help him sleep. Prakash testified that she administered one milligram of melatonin, sometimes during the day, to allow B.H. to relax and nap. Prakash testified that after a while, she no longer administered the melatonin to B.H. through the day.

¶ 17 Prakash testified that Cory Emery, who transported the children for CARITAS Family Solutions, observed Prakash try to reprimand B.H. with a time-out in his room. Prakash testified that B.H. was trying to exit his room, and Prakash locked the eye-and-hook lock on the bedroom door "for a second." Prakash testified that she remained at the door with her finger on the lock. Prakash testified that the lock on B.H.'s door, in addition to the lock on the bathroom door in her home, were installed for safety purposes. Prakash testified that she never locked B.H. in his room.

¶ 18 Prakash testified that she did not experience difficulties handling the children when they played outside. Prakash testified that W.H. had never been injured while he and B.H. lived with her. Prakash testified that W.H. and B.H. were happy living together, played well together, and loved each other.

¶ 19 Prakash testified that after the children were removed from her home in August 2017, she initiated an administrative appeal of that decision. Prakash testified that her attorney, on her behalf, requested that CARITAS Family Solutions allow her to visit B.H. and W.H., but Pettit declined the request.

¶ 20 Prakash testified that when B.H. returned to her, he exhibited negative behaviors, including talking about drinking beer and cursing, which he attributed to "mom and Tim." Prakash testified that B.H.'s behaviors had improved since, however. Prakash testified that since B.H.'s and W.H.'s return, B.H. had enrolled in Head Start, attending Monday through Thursday from 7:30 a.m. to 3:30 p.m. and was doing "pretty good" in school. Prakash testified that B.H. rode the bus to school and attended school with a friend. Prakash testified that he and W.H. also played with children at the church daycare. Prakash testified that she planned to enroll W.H. in daycare on Fridays and spend time at home with B.H.

¶ 21 Prakash testified that W.H. enjoyed early intervention services on Mondays for one hour. Prakash testified that she requested an assessment for him prior to his removal from her home, and he was determined not to be developmentally delayed. Prakash testified, however, that after his return, she requested a reassessment, where it was determined that he was 30% developmentally delayed.

¶ 22 Prakash testified that when the boys were not living with her and she was limited in visits, she was not as assertive in her discipline because of the limited time she had with them. Prakash testified that since the boys' return, however, she had resumed a more disciplined routine. Prakash testified that she completed a parenting class through Lutheran Social Services of Illinois (LSSI) in November 2018, which helped her to distinguish between grandparenting and parenting. Prakash testified that she recently took W.H. to the Children's Hospital in St. Louis to assess a growth over his left eye. Prakash testified that she and the boys go to the park, go for walks, and play in the yard.

¶ 23 Deana Hostettler, a licensed occupational therapist for early intervention, testified that she worked with B.H. once a week when he was 18 months old until almost his third birthday, when he was removed from Prakash's care. Hostettler testified that B.H. had behavior modification issues, balance issues, and physical deficits, such as mobility, sitting, crawling, and walking without falling and hurting himself. Hostettler testified that when W.H. was brought home as a newborn, B.H. threw toys. Hostettler testified that B.H. significantly progressed during the time she worked with him and that Prakash was an active participant in B.H.'s therapy. Hostettler testified that she provided exercises for Prakash to work with B.H. throughout the week until she next visited. Hostettler testified that "there was excellent follow-through." Hostettler described Prakash as "always very receptive to different techniques and strategies that were maybe outside of things that parents typically would think of."

¶ 24 Hostettler testified that B.H. had made excellent progress physically and that his speech language and expressive language had improved. Hostettler testified, however,

that B.H. continued to self-harm, hitting his head against a wall or floor, and to express defiance. Hostettler testified that B.H. also did not sleep well, took random catnaps throughout the day, and did not get a long span of sleep at night. Hostettler testified that Prakash sought out other support services for B.H., including counseling and frequent visits to the pediatrician and specialists in St. Louis. Hostettler testified that Prakash was consistently concerned for B.H.'s safety and well-being.

¶ 25 Debbie Oglesby, a developmental therapist with Coleman Tri-County Services, testified that she also worked with B.H. in Prakash's home. Oglesby testified that she worked with B.H. for six months when B.H. was two to three years old. Oglesby testified that B.H. experienced difficulty focusing, completing a task, and expressing language. Oglesby testified that B.H.'s developmental delay involved language and attention issues. Oglesby testified that she worked with B.H. once a week for 60 minutes. Oglesby testified that Prakash was an active participant with the visits. Oglesby testified that B.H. enjoyed the one-on-one attention and praise. Oglesby testified that Prakash interacted well with B.H. and read to him and W.H. often. Oglesby testified that Prakash provided the required patience, time, and love to B.H. Oglesby testified that she no longer worked with B.H. because he attended school.

¶ 26 Oglesby testified that she had visited W.H. in Prakash's home once per week since September 2018 to work on his speech and that W.H. progressed after two months. Oglesby testified that when she first evaluated W.H., he showed a 30% delay in speech, which qualified him for services. Oglesby testified that W.H.'s attention span improved, he spoke more clearly, and he was ready to accept challenges. Oglesby testified that

Prakash was also active and available regarding W.H.'s development. Oglesby testified that B.H. and W.H. appeared happy in Prakash's home. Oglesby testified that she considered Prakash "one of the top-ranked parents, as far as participation and stuff." Oglesby testified that each time she visited Prakash's home, it was clean, the boys were clean, and it was obvious she loves them.

¶ 27

2. Bones and Leweys

¶ 28 Leona testified that she was 62 years old, had been married to Tim, who was 39 years old, for 18 years, and lived in Cobden. Leona testified that she was previously employed at Addus Home Health Care but was currently unemployed so that she could stay home full-time for B.H. Leona testified that she and Rebecca were first cousins, their families were close, and they resided in the same area. Leona testified that B.H. was placed with her family on November 1, 2017, but was removed from her home in August 2018.

¶ 29 Leona testified that she had met W.H. and B.H. when they resided with the Lewey family. Leona testified that after B.H. transferred to her home and was separated from W.H., B.H. became calmer and more loving. Leona testified that B.H. liked the one-on-one attention and started improving within three weeks. Leona testified that after the boys were separated, the families nevertheless reunited two to three times a week for family functions and play dates, and B.H. and W.H. started playing with each other and sharing things with no pushing and shoving. Leona described W.H.'s relationship with the Leweys as loving.

¶ 30 Leona testified that within three to four weeks after B.H.'s placement with her, B.H.'s teacher, Michelin Escue, noted improvement in B.H.'s desire to learn and do better. Leona testified B.H. benefited from home counseling services and that she worked with him individually on his education and speech. Leona testified that B.H. developed affection and a bond for her and Tim. Leona testified that B.H. spent time with Tim outside and that B.H. enjoyed fishing in the creek and seeing the cows and horses on their property. Leona testified that due to Tim's employment as a pilot on a river boat, he was gone from home for 30 days and then returned for 30 days. Leona testified that their family's religious affiliation was Pentecost and that B.H. attended church services with the family.

¶ 31 Rebecca testified that she had been married to Shannon for 25 years. Rebecca testified that their youngest son, Dylan, was 16 years old; their middle son, Austin, was 19 years old; and their eldest son, Tyler, was 22 years old. Rebecca testified that she, Shannon, Dylan, and Austin lived in their home. Rebecca testified that she graduated from Southern Illinois University with a bachelor's in rehabilitation services and had worked as a youth counselor and as a child, adolescent, and adult counselor. Rebecca testified that Shannon worked as a recruiting operations officer for Army ROTC at Southern Illinois University.

¶ 32 Rebecca testified that B.H. and W.H. were placed in their home on September 12, 2017. Rebecca testified that B.H. hit and pushed W.H., that B.H. was difficult to redirect from negative behavior, and that B.H. became defiant and explosive upon redirection. Rebecca testified that they continued to struggle with B.H.'s behaviors and requested a

clinical intervention for placement preservation (CIPP) meeting in the fall of 2017, to determine whether the boys should remain together and whether to increase B.H.'s level of care. Rebecca testified that she understood from the CIPP meeting that B.H. needed more one-on-one care, and a family member, Leona, came forward to offer placement for B.H. Rebecca explained that there were no other children in Leona's home. B.H. was removed from the Lewey home after approximately six weeks. Rebecca testified that she continued to stay active in B.H.'s life and at Thanksgiving, she noticed that B.H.'s behavior had improved. Rebecca testified that she lived about 15 minutes from the Bone family, and that B.H. and W.H. had regular contact. Rebecca testified that during weekly visits between the boys, B.H. had been redirected more effectively. Rebecca testified that B.H.'s interactions with Leona and Tim were very loving. Rebecca testified that her home and the Bone family home were located in the same school district. Rebecca testified that after the separation, B.H. and W.H.'s interactions became more loving.

¶ 33 Rebecca testified that W.H. was placed with her family when he was 17 months old. Rebecca testified that W.H. referred to her as "mommy" and Shannon as "daddy." Rebecca testified that she planned to stay home full-time with W.H. and that it was in W.H.'s best interests to remain in her home. Rebecca also testified that W.H. was bonded with her family. Rebecca testified that her home had five bedrooms, so W.H. had his own room. Rebecca testified that it was her family's desire to adopt W.H.

¶ 34 Shannon testified that W.H. was bonded with his family, fished with Dylan and Tyler, and watched movies with Austin. Shannon testified that W.H. enjoyed the outdoors, riding the four-wheeler, and swimming. Shannon testified that at Thanksgiving,

he observed B.H., who had behaved more calmly. Shannon described W.H.'s birthday, where B.H. was sitting on Tim's lap eating cake and ice cream. Shannon testified that B.H. required the individual attention, and his behavior had improved as a result.

¶ 35 Escue, a special education teacher at Jonesboro school, testified that she began working with B.H. in September 2017. Escue testified that B.H. was aggressive and displayed social issues with peers and adults. Escue testified that B.H. was living with the Leweys and was then transferred to the Bones. Escue testified that Leona had contacted her about B.H.'s behavior, thereby beginning a "great relationship" between teacher and foster parent. Escue testified in the following three or four months, B.H.'s aggressive behavior drastically decreased, his listening improved, and he was not as upset emotionally. Escue testified, however, that B.H.'s behaviors regressed in the late spring 2018, and when she contacted Leona regarding the regression, Leona notified her that visits had begun with Prakash.

¶ 36 Lexi Clark, an intensive placement stabilization counselor at the Family Counseling Center, testified that she began weekly visits with B.H. in November 2017, when he was living with Leona and Tim. Clark testified that when she first met B.H., he was three years old, was not yet potty trained, and expressed aggressive behaviors. Clark testified that she provided services to B.H., he became potty trained, and his behaviors improved. Clark testified that she observed B.H. interacting with Leona and Tim, and it appeared B.H. had a good relationship with them and was stable in the Bone home. Clark testified that B.H. showed improvement from November 2017 until February 2018, when "things kind of halted" and she was notified that B.H. had begun visitations with Prakash.

Clark testified that B.H. expressed aggressive behavior thereafter, including an incident where he displayed "animalistic behaviors" by making noises, yelling, and sticking out his tongue. Clark testified that she wrote letters in February and March 2018 recommending, based on her observations of B.H., that visitation with Prakash cease.

¶ 37 Clark testified that she had continued to work with B.H. since the reintroduction of Prakash and that she had last visited B.H. on August 23, 2018. Clark testified that on one occasion, her supervisor accompanied her to meet B.H. and his family, and at that visit, B.H. hit the supervisor for no reason and would not apologize. Clark testified that B.H. also used inappropriate language and indicated that he learned the language from Prakash.

¶ 38 *3. CARITAS Family Solutions*

¶ 39 Ashley Cramer, previously a supervisor over adoptions and foster care at CARITAS Family Solutions, testified that she supervised B.H.'s and W.H.'s cases. Cramer testified that Prakash was receiving early childhood intervention services in the home, including occupational therapy, developmental therapy, and physical therapy. Cramer testified that Prakash acquired behavioral therapy on her own, with the approval of DCFS, although she paid for it herself. Cramer testified that Prakash was resourceful in getting the children to their appointments and taking care of their needs, despite the lack of a driver's license.

¶ 40 Cramer testified that on July 13, 2017, she reviewed the case file with Prakash, expressing concerns about Prakash's budget, disability payments, melatonin distribution to B.H., and criminal background issues to which the adoption unit had been alerted.

Cramer testified that she advised Prakash not to administer to B.H. more than the prescribed one milligram of melatonin at night and that B.H.'s medical file had indicated that Prakash had administered up to six milligrams of melatonin to B.H. throughout the day and night and that she had begun administering melatonin in November 2016. Cramer testified that she advised Prakash to keep a log of melatonin administered, that she received Prakash's July log, and that Prakash logged that she had administered only one milligram of melatonin, even though other medical records indicated otherwise. Cramer testified that she had received documentation from a July 31, 2017, sleep study performed at St. Louis Children's Hospital, wherein B.H. was administered one milligram of melatonin twice in one day, one at 7 p.m. and one at 11:30 p.m. for purposes of examination. Cramer testified that she spoke with the sleep technician, who explained that since B.H. had not fallen asleep, another one milligram of melatonin was necessary. Cramer testified that in September 2017, B.H.'s physician indicated that B.H. was far too young and too small to be receiving melatonin but that she had nevertheless prescribed him the minimum dose. Cramer testified that B.H.'s physician had explained that B.H. should only be administered melatonin, considered by DCFS to be a psychotropic drug, as needed, and that he did not need it. Cramer acknowledged that a hotline report was made involving Prakash's administration of melatonin, but the report was determined to be unfounded.

¶ 41 Cramer testified that Prakash's conviction for prostitution was a sexual offense that Cramer believed would prevent Prakash from adopting. Cramer testified that when B.H. was initially placed with Prakash, the conviction did not appear in her record. Cramer

testified that three separate forms in the licensing application requested prior criminal history, but Prakash did not disclose the prostitution charge or any other charges. Cramer testified that when she inquired regarding the charge, Prakash told her that the charge was dropped. Cramer testified that after reviewing the disposition from Franklin County, she explained to Prakash that the charge had not been dismissed, that she had pled guilty to it, and that she was unsuccessfully discharged from the probation that was sentenced. Cramer testified that when asked why she omitted the criminal charges from the forms, Prakash said that she felt that it would be best.

¶ 42 Cramer testified that a case note from January 2017, prior to her time as supervisor, noted that B.H. was "throwing a fit" during a caseworker/foster parent/child visit. Cramer testified that according to the note, Prakash had placed B.H. in his room and locked him behind the door. Cramer testified that she followed up with licensing about the case note, and the licensing worker had told Prakash to remove the lock from the door. Cramer testified that a caseworker later determined that it was removed. Cramer testified that Prakash noted to a caseworker at one time that she was concerned about her ability to care for B.H. as she aged and that she thought he would end up in a group home.

¶ 43 Cramer testified that on August 18, 2017, B.H. was removed from Prakash's home. Cramer testified that she and Pettit had attempted to engage Prakash, but Cramer determined that removal was appropriate because Prakash was dishonest and was improperly administering melatonin to control B.H.'s behavior.

¶ 44 Cramer testified that after B.H.'s and W.H.'s removal from Prakash's home, she noted improvements in B.H.'s behavior, although she testified that B.H.'s negative behaviors continued until she left the agency on October 27, 2017. Cramer testified that Egyptian Mental Health assessed B.H. and diagnosed him with attachment concerns and oppositional defiant disorder. Cramer testified that B.H. demonstrated behaviors "conducive of a diagnosis of developmentally delayed and substance exposed."

¶ 45 Cramer testified that B.H. and W.H. were initially placed with a family who determined, after a few weeks, that adoption of B.H. and W.H. would not be feasible. Cramer testified that the boys were then placed with the Lewey family, who determined, about two months after the boys' removal from Prakash, that B.H.'s behavior required more one-on-one care than they could provide. Cramer testified that she attended the CIPP meeting on October 27, 2017, wherein B.H.'s level of care was increased to specialized care with extra services. See 89 Ill. Adm. Code 337.20. B.H. was then placed with the Bone family. W.H. remained with the Lewey family.

¶ 46 Pettit, a CARITAS Family Solutions caseworker, testified that she was involved in B.H.'s care during his original placement and had known W.H. since his birth. Pettit testified that while living with Prakash, B.H. acted as if he did not like W.H. Pettit testified that at almost every visit, B.H. would throw a fit. Pettit testified that B.H. displayed tantrums when Prakash was caring for W.H. and threw objects at Prakash or at W.H. Pettit testified that Prakash had commented during a visit that B.H. would be very difficult to care for as he aged. Pettit testified that when living with Prakash, W.H. "just kind of sat there [and] didn't really have any happiness emotion."

¶ 47 Pettit testified that in January 2017, she observed Prakash using inappropriate discipline with B.H., who was two years old at the time. Pettit testified that B.H. threw a tantrum on the floor, and Prakash told him that he was going to time-out. Pettit testified that Prakash picked him up, set him on his bed in his bedroom, and locked him in his bedroom while he screamed, threw himself on the floor, and banged his head against the door. Pettit testified that Prakash was thereafter instructed to remove the lock and that locking him in his bedroom was not an appropriate form of punishment. Pettit testified that Prakash removed the lock by the time Pettit returned in February 2017.

¶ 48 Pettit testified that the decision to remove the children from Prakash was made on August 18, 2017, while she was absent on maternity leave. When questioned by the court, Pettit acknowledged that as of June 8, 2017, she had expressed no concerns regarding Prakash's adoption of B.H. and W.H. Pettit acknowledged that DCFS's policy attempts to place children in contact with their biological family for visits, and that policy was not followed after August 18, 2017.

¶ 49 Pettit testified that on November 1, 2017, B.H. was transferred to the Bone family, and W.H. remained with the Lewey family. Pettit testified that she observed improvement in both boys and that both boys were thriving in their placements. Pettit testified that she visited B.H. in the Bone home three times a month. Pettit testified that within a month of removal to the Bone home, B.H.'s tantrums, head-banging on the walls, and throwing himself on the floor had ceased. Pettit testified that B.H. was also strongly bonded to the Bone family, calling Leona "Mommy" and Tim "Daddy." Pettit testified that the Bone family had integrated B.H. into their family, and she believed it to be in

B.H.'s best interests to remain with the Bone family. Pettit further testified that she visited W.H. once or twice a month in the Lewey home and that W.H. had become more open and smiled a lot. Pettit testified that when she visited the Lewey family, W.H. would be smiling, laughing, and calling Rebecca "Mommy." Pettit testified that W.H. loved on Rebecca and Shannon, who he referred to as "Daddy." Pettit testified that W.H. was closely bonded to the Lewey family, which included three brothers. Pettit testified that within a month of staying with the Lewey family, W.H. had begun to speak more words. Pettit testified that the Lewey family sought to adopt W.H.

¶ 50 Noting that B.H.'s placement was separate from W.H.'s placement, Pettit testified she believed it to be in their best interests to be separated. Pettit testified that after their separation, she observed improvements in the sibling relationship. Pettit testified that B.H. and W.H. played well with each other and hugged each other. Pettit testified that B.H. stopped hitting W.H., as he had when they had lived together.

¶ 51 Pettit testified that in December 2017, DCFS had required supervised visitation with Prakash. Pettit testified that during required visits between B.H. and Prakash, Prakash was distant and lacked empathy for B.H. Pettit testified that Prakash referred to B.H. as a "bad child." Pettit testified that she never observed B.H. hold Prakash's hand or sit with her, like he did with Leona. Pettit testified that Prakash provided more attention to W.H.

¶ 52 Pettit testified that she was further ordered to work towards returning the children to Prakash but that she notified DCFS that it was not in the best interests of the children to be removed from their nonrelative foster placements. Pettit testified that CARITAS

Family Solutions remained unwilling to follow DCFS's requirements and was removed from the case on February 28, 2018.

¶ 53 Pettit testified that she participated in the clinical placement review conducted by Betty Alvin, who decided that the boys should return to Prakash. Pettit acknowledged that because she disagreed with the decision, she unilaterally contacted the assistant state's attorney to prevent the boys' return to Prakash. Pettit testified that once the children were removed from Prakash on April 18, 2017, Prakash did not have visitation with them until February 21, 2018. Pettit testified that she could not answer why CARITAS Family Solutions had not encouraged contact between Prakash and the boys, based on the possibility that they may return to her. Pettit acknowledged that at some point CARITAS Family Solutions soured on the thought of Prakash adopting the boys and unilaterally made decisions supporting their separation, avoiding both DCFS and the circuit court.

¶ 54

4. DCFS

¶ 55 Alvin, the southern region clinical services coordinator for DCFS, testified that on November 20, 2017, she conducted a clinical placement review with regard to B.H. and W.H.'s removal from Prakash's home. Alvin testified that she reviewed the children's medical records, treatment records, and early intervention records. Alvin testified that she also reviewed Prakash's legal information and DCFS service plans, placement, moves, and legal information. Alvin testified that Prakash's dishonesty and conduct in 1992 did not outweigh the positive behavior and interactions she had experienced with B.H. and W.H. over the years. Alvin nevertheless noted that B.H.'s behaviors were a problem and

there were areas of parenting concerns to be addressed by the therapist, including whether Prakash could keep W.H. safe from aggressive attacks by B.H.

¶ 56 With regard to the incident in February 2017, where Prakash locked B.H. in his room, Alvin noted that she questioned whether a hotline notification or corrective action plan occurred, and there was none. Alvin testified that she also considered Prakash's conviction for prostitution, determined that Prakash had been arrested in 1992 on a charge of prostitution, and concluded that "[t]here was an oversight in Franklin County Court in transmitting that information to the FBI where it would have been recorded as a conviction." Alvin explained that although DCFS policy renders a person convicted of a sex crime ineligible for foster care licensing, Prakash was nevertheless licensed as a foster parent because she had denied her criminal background and Franklin County had failed to properly record her conviction. Alvin further explained, however, that Prakash, as a relative, did not need to be licensed in order to adopt, and therefore, her guilty plea did not bar her from adopting B.H and W.H.

¶ 57 Alvin testified that during the clinical placement review, she noted that the administration-of-melatonin concerns were unfounded and that Prakash's 1992 conviction for prostitution involved confusion within the agency, was a waivable issue had Prakash been forthcoming prior to her license, and did not prohibit Prakash, as a relative, from licensure to adopt. Alvin concluded that the boys should return to Prakash. Alvin testified that DCFS had no information from any other report across the nation that Prakash had engaged in prostitution or otherwise engaged in immoral behavior that would indicate she would not be a good caretaker for the boys.

¶ 58 Lori Gray, the program manager for the southern region of DCFS, testified that DCFS was appointed guardian in W.H and B.H.'s cases, and their cases were initially assigned to CARITAS Family Solutions, whom DCFS contracted with to manage the cases. CARITAS, as the purchase of service agency, had been responsible for day-to-day case management, critical decisions, and licensing. Gray testified, however, that on February 28, 2018, CARITAS Family Solutions was removed from the boys' cases because it was unwilling to comply with DCFS's decision to return the boys to Prakash. Gray testified that CARITAS Family Services had removed the children from Prakash without providing her 14-day notice, which would have allowed her appeal rights to proceed, and had failed to undertake efforts to reunite B.H. and W.H. with Prakash subsequent to the clinical placement review.

¶ 59 Gray testified that on February 28, 2018, she removed CARITAS Family Solutions from B.H. and W.H.'s cases because it was unwilling to comply with DCFS's decision to return the children to Prakash. Gray testified that she believed it to be in the children's best interests to be at Prakash's residence.

¶ 60

5. LSSI

¶ 61 Vickie Johnson, of LSSI, testified that she transported B.H. and W.H. from Eldorado to Prakash's home in Carmi for supervised visits from June 2018 until the boys were returned to Prakash. Johnson testified that at the beginning of the visits, the boys did not want to go, but as the visits progressed, "they were fine with it." Johnson testified that during the visits, she had to intervene to keep the boys safe because the boys were too close to the road, because Prakash's reprimands or warnings were too soft-spoken, and

because Prakash was feeding them too many sweets. Johnson testified, however, that during the visits, Prakash also appropriately read to B.H. and W.H., fed them, and brought new toys. Johnson did not observe any safety violations or concerns regarding Prakash's residence.

¶ 62 Devin Holder, placement supervisor for LSSI, testified that his agency took the case over from CARITAS Family Solutions, after the clinical placement review, wherein DCFS determined, based on interactions, policy, and procedure, that it was in the children's best interest to place them together in Prakash's care. Accordingly, Holder testified that on May 21, 2018, he signed notices of change of placement to move the children from their foster homes to Prakash's home. Holder testified that the children were moved on August 24, 2018. Holder testified that he gave short notice to the nonrelative foster parents due to concerns that additional hotline calls against Prakash would be made to delay moving the boys, because no move would occur until any hotline call issue was resolved. Holder testified that after the children were moved to Prakash's residence, he had no safety concerns for the children.

¶ 63 Holder testified that he participated in the preparation of a family service plan for W.H. and B.H., dated September 13, 2018. Holder testified that the plan indicated that Prakash was meeting all of the goals that had been set forth for the children. Holder testified that prior to the creation of the service plan, Prakash secured the extensive services needed by the children.

¶ 64 Holder testified that prior to the end of September 2018, when he left the agency, LSSI was providing services to Prakash and the boys and making weekly visits, both

announced and unannounced. Holder testified that the family service plan dated September 13, 2018, indicated that Prakash was financially stable to care for B.H. and W.H. Holder testified that he observed Prakash with B.H. and W.H. in the home on one occasion for 30 minutes. Holder testified that the boys were watching a movie, and he observed appropriate behavior and had no concerns. Holder testified that he had had the opportunity to visit all three families and all three residences and had no concerns about any of the families.

¶ 65 Katherine McDaniel, child welfare specialist for LSSI, testified that she was assigned to B.H. and W.H.'s case on March 16, 2018, after the clinical placement review resulted in the decision to return the children to Prakash. McDaniel testified that she conducted monthly home visits at the Lewey home and tri-monthly home visits in the Bone home. McDaniel testified that when she observed W.H. in the Lewey home, he seemed very well taken care of and in a good mood. McDaniel testified that when she observed B.H. in the Bone home, B.H. was occasionally in a good mood, Leona handled him very well, and B.H. was affectionate with the Bone family. McDaniel concluded that W.H. and B.H. were thriving in their placements and had bonded with their nonrelative foster families.

¶ 66 However, noting DCFS's clinical placement review decision finding that W.H. and B.H. needed to be placed together in a relative's home, McDaniel testified that she considered removal from their foster families in their best interests because "family is the best place" and "Prakash is great-grandma." McDaniel testified that once the boys reinitiated contact with Prakash, they were happy to see each other, and once the visits

became more frequent, they interacted with Prakash more often. McDaniel testified that they were happy to see Prakash, just as they were happy to see each other. McDaniel testified that other than asthma, she knew of no other health issues that may affect Prakash's ability to care for the children.

¶ 67 McDaniel acknowledged that while W.H. was with the Lewey family, he did not exhibit any delays. McDaniel testified that in her most recent report, W.H. had been declared delayed according to one therapist. McDaniel also acknowledged that the boys had lost "a pound or two" since returning to Prakash. McDaniel testified that based on her knowledge and observations, the boys were thriving in their foster homes up until August 24, 2018. McDaniel testified that since August 24, 2018, the boys have thrived in Prakash's home. McDaniel testified that her agency has identified Prakash as the adoptive parent of both children and was waiting for the completion of the hearing to proceed.

¶ 68

B. GAL

¶ 69 On December 14, 2018, the GAL for B.H. and W.H. filed his report, wherein he noted that both B.H. and W.H. appeared very close and bonded together as siblings. After observing the foster parents' interactions with the minors, the GAL concluded that he had no concern with the foster parents' ability to provide for and satisfy the best interests of B.H. and W.H. After observing Prakash's interaction with the minors, the GAL concluded that, despite a six months absence, the boys knew Prakash, and Prakash exhibited engaging and appropriate responses to the boys. The GAL characterized Prakash as "a competent great grandmother" engaged in the boys' education and health. The GAL noted that although small, her home was adequate and that she exhibits attention and love for

both. The GAL described as problematic Prakash's credibility arising from the administration of melatonin and her continued denial of a conviction of prostitution. The GAL further noted Prakash's driving restrictions and the improved behavior of B.H. when separated from W.H. The GAL recommended that the boys be removed from Prakash and returned to their nonrelative foster parents.

¶ 70

C. Circuit Court Order

¶ 71 On January 2, 2019, the circuit court entered an order denying the petitions for custody and guardianship. In its order, the court noted that it was "critical of the actions of CARITAS [Family Solutions] and of the former CASA worker" in that "CASA overstepped, breached confidentiality, and *** initiat[ed] hotline reports in an attempt to substitute *** judgment for the Court and DCFS." The circuit court noted that on June 22, 2017, at the permanency hearing, no one had raised any issues regarding Prakash's care, but a month later, CARITAS Family Solutions had removed the boys without input from the court or DCFS. The circuit court found that neither bases cited by CARITAS Family Solutions justified the removal of the boys from Prakash.

¶ 72 The circuit court noted that CARITAS initiated the hotline call regarding the overdose of melatonin at the sleep study in July 2017 but found it incredible that the hospital technicians would have allowed the administration of a harmful dose. The circuit court further found that CARITAS Family Solutions' actions produced substantial instability in the lives of the children and that had the administrative decision been promptly followed, the children would have been properly returned to Prakash in about

three months. The circuit court concluded that CARITAS Family Solutions and the CASA worker acted in a manner which attempted to bypass a valid decision of DCFS.

¶ 73 The circuit court determined that the children's best interests favored placement with DCFS, and by extension, Prakash. Considering the best-interests factors found in subsection 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2018)), the circuit court found that Prakash, the Bone family, and the Lewey family were capable of meeting the boys' needs, but that with regard to the boys' background and ties, sense of attachments, and the need for permanence, including the child's need for stability and continuity of relationships with siblings and other relatives, these factors favored Prakash. The circuit court was greatly influenced by "the importance of the siblings being together with family." The circuit court also noted that while the boys connected with the Bones and Leweys, it could not ignore the fact that the transfer should not have occurred. The circuit court thereby denied the petitions to modify custody and guardianship. On January 31, 2019, Leona and Tim filed a notice of appeal.

¶ 74 Thereafter, on July 3, 2019, this court entered an order affirming the trial court's denial of Leona and Tim's request for change of custody and guardianship. On July 8, 2019, Leona and Tim filed a petition for rehearing in this court, which was granted, and our July 3, 2019, order was withdrawn. Upon further review of the petition for rehearing, we issue a modified order which again affirms the denial of the request for change of custody and guardianship.

¶ 75

II. ANALYSIS

¶ 76 On appeal, DCFS argues that Leona and Tim, as former foster parents, had no legal right to foster B.H., and therefore, did not have standing to appeal the circuit court's order.

¶ 77 "The Juvenile Court Act [(Act)] is a statutory scheme, created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor's safety and moral, emotional, mental and physical welfare, and the best interests of the community." *In re Austin W.*, 214 Ill. 2d 31, 43 (2005), *abrogated on other grounds by In re M.M.*, 2016 IL 119932; 705 ILCS 405/1-2 (West 2018). Pursuant to the Act, once a child has been adjudicated abused, neglected, or dependent (705 ILCS 405/2-21 (West 2018)), the court must determine whether it is in the child's best interests to be made a ward of the court and the "proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2018); *In re Austin*, 214 Ill. 2d at 43. "Although dispositional orders are generally considered 'final' for the purposes of appeal (see *In re W.C.*, 167 Ill. 2d 307, 326 (1995)), they are subject to modification in a manner consistent with the provisions of section 2-28 of the Act." *In re Austin*, 214 Ill. 2d at 43-44. Subsection (4) of section 2-28 of the Act (705 ILCS 405/ 2-28(4) (West 2018)) provides:

"The minor or any person interested in the minor may apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian of the person or for the restoration of the minor to the custody of his parents or former guardian or custodian."

¶ 78 Former foster parents have a right to be heard in juvenile proceedings, but they do not become parties to the proceedings. 705 ILCS 405/1-5(2)(a) (West 2018). However, in this case, the Bones and the Leweys, as "person[s] interested in the minor[s]," filed petitions for custody and guardianship. Considering the amount of time they cared for B.H. and W.H., their desire to adopt them, and their status as foster parents, in addition to the previous termination of both parents' rights, the circuit court properly allowed them, as persons "interested in the minor[s]," to intervene as parties and file their petitions for custody and guardianship. See *In re M.W.*, 221 Ill. App. 3d 550, 552 (1991) (in construing *In re S.J.K.*, 149 Ill. App. 3d 663 (1986), court noted that in filing petition requesting custody, foster parents were necessarily parties to proceedings). In doing so, the circuit court implicitly determined that it was in the best interests of the children for the Leweys and the Bones to have standing and intervenor status. See 705 ILCS 405/1-5(2)(d) (West 2018) (allows the court to grant standing to "any foster parent if the court finds that it is in the best interest of the child for the foster parent to have standing and intervenor status"); see also 735 ILCS 5/2-408(f) (West 2018) (general intervention statute, providing that, with few exceptions, "[a]n intervenor shall have all the rights of an original party"). Accordingly, considering the anomalous procedural posture of this case, including the State's opposition to DCFS's position and the previous termination of all parental rights, the circuit court properly allowed the Bones and Leweys, as persons interested in the minors (705 ILCS 405/2-28(4) (West 2018)), to intervene as parties and file their petitions for custody and guardianship, and therefore, they had standing to appeal the circuit court's denial of their petitions. See *In re Dively*, 79 Ill. App. 3d 428,

431 (1979) (a "person interested in the minor" is a party and has the right to appeal); but see *In re C.H.*, 2018 IL App (3d) 180089, ¶ 13 (because foster parents have no legal right to foster child, they lack standing to bring appeal).

¶ 79 Consequently, on appeal, Leona and Tim argue that the circuit court's decision denying their petition for custody and guardianship was against the manifest weight of the evidence.

¶ 80 "[H]earings conducted on petitions for a change in custody are simply further dispositional hearings, which must be conducted in accordance with section 2-22(1) of the Act." *In re Austin W.*, 214 Ill. 2d at 44; 705 ILCS 405/2-22(1) (West 2018). Thus, the court "shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2018); *In re Austin W.*, 214 Ill. 2d at 44. "Accordingly, once a child has been made a ward of the court and a dispositional order has been entered, the court may, at any time, vacate the original dispositional order and enter any other dispositional order that it could have entered under section 2-23[1] of the Act, thereby effecting a change in the custody and guardianship of the minor, if the court finds that to do so would be in the best interest of the child." *In re Austin W.*, 214 Ill. 2d at 44; 705 ILCS 405/2-23(1) (West 2018) (a minor found to be neglected, abused, or dependent may be placed in accordance with section 2-27); 705 ILCS 405/2-27(d) (West 2018) (where parents are unfit, court may commit the minor to DCFS for care and service).

¶ 81 "The only question when reviewing the court's decision to change custody is whether it is against the manifest weight of the evidence." *In re Austin W.*, 214 Ill. 2d at

49. The court's decision is against the manifest weight of the evidence "only where the opposite result is clearly evident or where the determination is unreasonable, arbitrary, and not based on the evidence presented." *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004).

¶ 82 When issuing an order of disposition regarding the custody and guardianship of a minor ward, the guiding principle remains the best interests of the child. *In re Austin W.*, 214 Ill. 2d at 46. "Recognizing that a best-interests determination is often a difficult one, the legislature has identified various factors that help inform the decision." *In re Austin W.*, 214 Ill. 2d at 49. Section 1-3(4.05) of the Act provides:

"Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

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

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

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

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

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

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2018).

"Other important considerations when deciding a child's best interests are 'the nature and length of the child's relationship with the present caretaker' and the effect that a change of placement would have upon the emotional and psychological well-being of the child." *In re Austin W.*, 214 Ill. 2d at 50 (quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 534 (1991)).

¶ 83 With regard to the physical safety and welfare of the child (705 ILCS 405/1-3(4.05)(a) (West 2018)), we note that B.H. and W.H. tested positive for substance exposure at birth and that all three families sought educational and health services to assist them in their challenges and development. Although evidence was presented that Prakash had improperly administered melatonin to help B.H. sleep, further evidence revealed that this report had been determined to be unfounded. The evidence instead

revealed that all three homes sufficiently provided for the physical safety and welfare of the children.

¶ 84 With regard to the development of the children's identity (705 ILCS 405/1-3(4.05)(b) (West 2018)), although testimony revealed that B.H. and W.H. had sufficiently bonded with their nonrelative foster parents, both B.H. and W.H. were the biological great-grandchildren of Prakash and identified as her family. Likewise, when considering the children's background and ties (705 ILCS 405/1-3(4.05)(c) (West 2018)), Prakash provided familial ties for the children. Prakash remained connected to their grandfathers, who had expressed their willingness to assist with them, and in Prakash's home, W.H. and B.H. lived together as siblings with their great-grandmother. Moreover, we agree with the circuit court that the children's sense of attachments (705 ILCS 405/1-3(4.05)(d) (West 2018)) and need for permanence, including continuity of relationships with siblings and other relatives (705 ILCS 405/1-3(4.05)(g) (West 2018)), favor Prakash for these reasons. Prakash had cared for the children together as siblings for the majority of their lives, had bonded and loved the children, and provided a sibling placement for them to live together. Having reviewed the best-interest factors and the extensive evidence in this case, we cannot conclude that the circuit court's judgment was against the manifest weight of the evidence, as the opposite result was not clearly evident and the court's decision was not unreasonable or arbitrary, and it was based on the evidence presented. In affirming the circuit court's judgment on this basis, we need not address Prakash's and DCFS's contention regarding the Lewey's failure to appeal W.H.'s placement.

¶ 85

III. CONCLUSION

¶ 86 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 87 Affirmed.