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2014 IL App (4th) 140276-U  
NOS. 4-14-0276, 4-14-0277 cons.

**FILED**  
August 27, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: the Adoption of L.S., a Minor,	)	Appeal from
JOHN SHEARER and JACQUELINE SHEARER,	)	Circuit Court of
Petitioners-Appellants,	)	Macon County
v. (No. 4-14-0276)	)	No. 13AD34
SCOTT DAVIDSON; EMILY DAVIDSON; and L.S., a	)	
Minor,	)	
Respondents-Appellees.	)	
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In re: the Adoption of L.S., a Minor,	)	No. 13AD36
SCOTT DAVIDSON and EMILY DAVIDSON,	)	
Petitioners-Appellees,	)	
v. (No. 4-14-0277)	)	Honorable
L.S., a Minor,	)	Thomas E. Little,
Respondent.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Turner and Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court's adoption order was not against the manifest weight of the evidence.
- ¶ 2 In July 2013, John Shearer and Jacqueline Shearer filed a petition to adopt L.S. (born July 8, 2005) in Macon County case No. 13-AD-34. In August 2013, Scott Davidson and Emily Davidson filed a competing petition to adopt L.S. in Macon County case No. 13-AD-36. In March 2014, after a hearing on the petitions, the trial court granted the Davidsons' petition and denied the Shearers' petition.
- ¶ 3 The Shearers appeal and contend the trial court's decision was against the manifest weight of the evidence. Further, the Shearers claim (1) the court failed to consider the

best interest standard, (2) the guardian *ad litem* (GAL) was not qualified to address the sensitive issues in this case and the GAL's report was deficient, and (3) "[n]o State authority acted in a manner to protect the constitutional due process of the minor." We affirm.

¶ 4

## I. BACKGROUND

¶ 5 Beginning in October 2007, the Davidsons became L.S.'s foster parents. L.S.'s mother, Jessica, struggled with drug abuse, and L.S.'s father had died soon after L.S. was born. L.S. lived with the Davidsons until August 2009, when she returned to her mother's care. After L.S. returned to Jessica's home, L.S. and Jessica maintained regular contact with the Davidsons.

¶ 6 On January 21, 2013, Emily Davidson received a voicemail message from L.S. that caused her concern. When Emily returned L.S.'s message, L.S. told Emily that her mother would not wake up. Emily spoke to Jessica's friend, who was at the home, and learned that Jessica had likely passed away. Emily and Scott drove to the Charleston police department, where L.S. had been taken. At the police station, Emily spoke to Mary Shearer, L.S.'s maternal grandmother, and Jennifer Wolter, L.S.'s maternal aunt. L.S.'s family members decided that L.S. should live with the Davidsons, and Emily took L.S. back to her home.

¶ 7

### A. The Parties' Petitions for Guardianship

¶ 8 In February 2013, the parties filed competing petitions for guardianship of L.S. In July 2013, the trial court held a hearing on the petitions. The court granted the Davidsons' petition for guardianship and this court affirmed. *In re Guardianship of L.S.*, 2014 IL App (4th) 130766-U.

¶ 9

### B. The Parties' Petitions for Adoption

¶ 10 In July 2013, the Shearers filed a petition to adopt L.S. in Macon County case No.

13-AD-34. In August 2013, the Shearers filed a motion for substitution of judge. In August 2013, the Davidsons filed a petition to adopt L.S. in Macon County case No. 13-AD-36. In September 2013, the Shearers filed a motion to intervene in Macon County case No. 13-AD-36. In September 2013, the trial court consolidated the two cases and granted the Shearers' motion for substitution of judge. The record does not indicate the Shearers noticed their motion to intervene for a hearing or requested the court rule on that motion.

¶ 11 C. Hearing on the Parties' Petitions for Adoption

¶ 12 A hearing on the parties' petitions for adoption commenced in December 2013, at which the parties presented the following evidence.

¶ 13 1. *Evidence in Support of the Shearers' Petition*

¶ 14 a. Todd Ochs' Testimony

¶ 15 Todd J. Ochs, a pediatrician in Chicago, testified as an expert in the psychological and physical needs of children being adopted or in foster care. Ochs testified that L.S. should have undergone a psychological and physical evaluation after the events of January 2013. He used the adverse childhood event scoring system to look at what trauma means to the child as he or she grows up. He testified he did not know if the absence of an evaluation would present an issue and asked, "what if this child really is \*\*\* superficially doing very well and underneath is \*\*\* volcanic lava[?]" He opined that a child with L.S.'s background may develop post-traumatic stress disorder (PTSD). However, "it very well may be that this is one of those kids who is so resilient that she's fine now and she's going to be fine." He testified that he does not typically genetically test children for bipolar disorder; rather, he would have the child evaluated by a psychologist and then, if at risk, periodically reevaluated. On the issue of sexual abuse, he

testified he would not be concerned about one episode of "vaginal pain" if the child's history was consistent with it not being abuse. If there was such a history, he would be worried if there were repeated episodes.

¶ 16 Ochs testified it was "important" for children to have someone "like them" to model after and it would be "helpful" for L.S. to have people in her life that are biracial. He disagreed it was crucial for a child to be in a home that was racially homogeneous; rather, "love's more important." He testified that "a stable, loving environment is crucial" to a child's development.

¶ 17 On cross-examination, Ochs admitted he had never met L.S. He admitted his testimony was entirely theoretical. He testified it would be beneficial for L.S. to grow up with a biracial brother, as she would in the Davidsons' household. It would be traumatic for L.S. to be removed from her current placement and relocated to California.

¶ 18 b. William Shearer's Testimony

¶ 19 William Thomas Shearer, a pediatrician in Houston, Texas, and John's father, testified he specializes in immune deficiencies in children. The trial court accepted William as an expert in pediatrics, immunodeficiency, and as a medical doctor in the general practice of medicine.

¶ 20 William testified that L.S. should be tested for the human immunodeficiency virus (HIV) because she was "at-risk" for developing or acquiring HIV. This was based on the lifestyle Jessica may have had and L.S.'s possible exposure to "unsavory characters." He testified, based on his professional opinion, L.S. should have had a psychological evaluation, but to his knowledge, she had not.

¶ 21 William testified he adopted John, who is biracial, and four other children. William testified his sister, Mary Shearer, was L.S.'s grandmother, and John and L.S. are first cousins, once removed. As for possible placements for L.S., William testified that Mary passed away in July 2013 and Jennifer Wolter had medical issues and had expressed an inability to care for L.S. At some point, Mary had contacted John and Jacqueline and had discussed the possibility of L.S. living with them. William testified John and Jacqueline lived in an integrated community in California. He opined it was "extremely important" for L.S. to be integrated into a diverse community. William, Mary, Jennifer, and Jessica were Catholic and, as far as William knew, L.S. was Catholic.

¶ 22 William had only spoken to L.S. when she was a toddler. He did not testify that he had ever met L.S. William believed it was "very important" for L.S. to retain her "family heritage." He was concerned L.S. was being "removed from her family who wants her and who can provide for her in favor of strangers." He testified an extensive family network would be available if L.S. was placed with the Shearers and he had created a college fund to provide for L.S.'s education that would be available even if the Davidsons' petition was granted.

¶ 23 On cross-examination, the Davidsons' counsel asked whether there was any information supporting William's conclusion L.S. was at risk of acquiring HIV. William responded, "[i]f you don't look for something, you will never find it." He believed it would be "an easy transition," with the right preparation, for L.S. to be relocated to the Shearers' household.

¶ 24 c. Mark Shearer's Testimony

¶ 25 Mark Shearer testified he lived in Houston, Texas, and was John's brother. Mark,

like John, is biracial and was adopted. He testified that being biracial can be "somewhat of a challenge, depending on where you live and in what kind of environment you're in." It became "less difficult" as he grew up and was no longer difficult. He testified that it was helpful for him to grow up in a racially diverse household. Mark believed that he could provide an example for L.S. He believed John and Jacqueline were ready to take on the responsibility of caring for L.S., and they would be "great parent[s]."

¶ 26 d. John and Jacqueline Shearer's Testimony

¶ 27 John and Jacqueline testified they lived in Lakewood, California. John testified that Jessica, L.S.'s mother, was his first cousin, and L.S. would be his first cousin, once removed. The couple first attempted to care for L.S. when she was approximately 2 1/2 years old. At that time, Mary contacted William to ask if John and Jacqueline would be willing to step forward and care for L.S. On a regular basis, Mary contacted them with updates on L.S. The couple filed a petition for adoption in Piatt County but ultimately withdrew that petition because Jessica regained custody of L.S. and informed them that "everything was fine" and "things were better." When John learned of Jessica's death through William, he authorized a new petition to be filed in Illinois. The couple had not been contacted about being a potential placement option for L.S.

¶ 28 John is an emergency-room nurse. Jacqueline, who holds a master's degree in social work, testified she works in an urgent care center and works with families suffering from mental illness. John testified the couple would be able to coordinate their work schedules so that he or Jacqueline would be able to be home to care for L.S. The Shearers live in a two-bedroom apartment and had decorated a bedroom for L.S. John described the couple's neighborhood as diverse and composed of many different ethnicities. The neighborhood contains three parks, a

public school, and a private Catholic school, in which John and Jacqueline anticipated enrolling L.S. Jacqueline testified she attends mass twice a month and John attends approximately every other month. The couple planned to raise L.S. as a Catholic but would "honor" her wishes if she desired to stay in her existing faith.

¶ 29 John testified he believed he could empathize with L.S.'s experience because they had similar backgrounds as he was biracial and adopted. He was concerned about L.S.'s needs in regard to her ethnicity and whether the Davidsons would cultivate her experience with African Americans.

¶ 30 The trial court accepted Jacqueline as an expert in social work. Jacqueline said, based on her professional experience, she would be concerned L.S. had abandonment issues, suffered sexual abuse, PTSD, depression, anxiety, and other potential maladaptive disorders. Her recommendation would be for a thorough "biological, psychological, and social evaluation immediately." Such an evaluation should have been performed after the events of January 2013. She would have arranged for such an evaluation to get a "baseline" and to help "know how we can appropriately care for her." Jacqueline said that, in her professional opinion, L.S.'s biracial background was relevant and would need to be addressed to help L.S.'s self-esteem and her understanding of her identity.

¶ 31 Neither John nor Jacqueline had ever met L.S. John had requested to see L.S. while she was living with the Davidsons, but the Davidsons responded with a letter that stated John and Jacqueline could only visit L.S. if both parties' attorneys, the GAL, and Jennifer were all present and if Jacqueline and John obtained permission from Jennifer and Mary. The proposed agreement also prohibited Jacqueline and John from providing gifts or discussing any

future plans. Since the guardianship proceedings, John testified the couple had communicated with L.S. a total of "four or five times" through video conferencing. Jacqueline testified that if they were allowed to adopt L.S., they would permit her to contact the Davidsons.

¶ 32 The couple had completed classes to be foster parents. They were not pursuing adoption through an agency. The couple had not been in contact with the Interstate Compact for the Placement of Children or received clearance to remove L.S. from Illinois.

¶ 33 e. Lindsey Sites' Testimony

¶ 34 Lindsey Sites, an employee with Webster-Cantrell Hall, a facility in Decatur that works under Department of Children and Family Service (DCFS) authority, testified she is involved in placement decisions regarding children in protective custody and foster care. She testified she is only involved in open cases and is not responsible for investigating whether a child needs to be taken into protective custody. On January 21, 2013, Emily made contact with Sites when Emily called Webster-Cantrell Hall, the agency through which the Davidson's became licensed foster parents, to report the Davidsons were traveling to Charleston to assist with L.S. Neither she nor DCFS were involved in the decision to place L.S. with the Davidsons in January 2013.

¶ 35 Sites was retained by the Davidsons to write a guardianship home study report and a private adoption home study. This did not involve DCFS. Her responsibilities did not include investigating whether John and Jacqueline were possible placements.

¶ 36 f. Affidavits in Support of John and Jacqueline

¶ 37 Christine Shearer, John's sister, submitted an affidavit expressing her support of John and Jacqueline's petition to adopt L.S. Melissa Shearer, John's sister, submitted an affidavit

expressing her support of John and Jacqueline's petition. Miranda Ramirez, a licensed clinical social worker in California, submitted an affidavit describing John and Jacqueline's home, neighborhood, employment, lifestyle, and personal characteristics.

¶ 38 *2. Evidence in Support of the Davidsons' Petition*

¶ 39 a. Jim Schoolenberg's Testimony

¶ 40 Jim Schoolenberg, Jessica's father and L.S.'s maternal grandfather, testified he was at his home in Tucson, Arizona, when he learned Jessica had died. He spoke to Mary and Jennifer over the telephone about who should care for L.S. They agreed L.S. should stay with the Davidsons. He believed it would be "seamless" and L.S. would be with people who knew her and in a place where she was comfortable. DCFS was not involved in this decision.

Schoolenberg testified that the Davidsons had been L.S.'s "only caretakers for the last seven years."

¶ 41 b. Jennifer Wolter's Testimony

¶ 42 Jennifer, Jessica's sister, testified that on January 21, 2013, L.S. called her, Mary, and the Davidsons because she could not wake Jessica. Jennifer went to the Charleston police station, where L.S. had been taken. There, she and Mary consulted with a DCFS representative, who agreed that who should care for L.S. was a family decision. Jennifer, Mary, and Schoolenberg decided L.S. should stay with the Davidsons. Jennifer explained that they wanted to keep L.S. in the family and the Davidsons "were part of the family." Jennifer testified that they never considered placing L.S. with John and Jacqueline because they had little interaction with her family and were "far away."

¶ 43 Jennifer testified L.S. had bonded with the other children in the Davidsons' home

and treated them as her siblings. L.S. referred to Scott as "Tatti," which is "dad" in Romanian, and Emily as "Mommy Emily." While in the Davidsons' care, L.S. had become more calm, mature, and willing to talk about her feelings. Since January 2013, Jennifer had been able to maintain a close relationship with L.S. while she lived with the Davidsons. She believed they would continue to allow her to maintain a relationship with L.S.

¶ 44 c. Emily Davidson's Testimony

¶ 45 Emily Davidson testified that she had been a licensed foster parent for 8 years and married to Scott for 10 years. She had cared for L.S. as a foster parent and had known L.S. since L.S. was 2 1/2 years old. The Davidsons had communicated with Jessica during the period they acted as L.S.'s foster parents. Jessica kept in contact with them when L.S. returned to her care and the Davidsons saw L.S. for birthdays, Christmas, and other special occasions.

¶ 46 With regard to the events on January 21, 2013, Emily testified she received a phone call from L.S. that led to her and Scott traveling to Charleston. Emily went to the police department, where she spoke with Mary, Jennifer, a police officer, and a representative from the DCFS office in Charleston. The authorities said the matter was not a DCFS case and was in the family's hands. It was decided that L.S. would stay with the Davidsons. When the Shearers' counsel asked whether there was anything about the events of that day that "invoked a responsibility to hotline the circumstances that [L.S.] found herself in," Emily responded, "No."

¶ 47 Emily said L.S. had a good relationship with the Davidsons' four other children, one of whom was adopted and biracial. L.S. likes to play teacher with the younger children. The Davidsons have pets, including a dog, cat, and chickens. L.S. has her own room. Emily homeschooled all of the children except L.S. because L.S. was not accustomed to home

schooling. According to Emily, L.S. was involved in soccer, dance, and cheer camp. Emily believed L.S. was well-adjusted into their household and was a member of their family. While in the Davidsons' care, L.S. has had visits with Jennifer, her aunt, and Jennifer's three children.

¶ 48 The Davidsons attend First Christian Church in Decatur. Jessica had granted the Davidsons permission for L.S. to attend church with them and L.S. attended church when she lived with the Davidsons. After L.S. returned to her mother's care, Jessica had taken L.S. to a Christian Church in Charleston. Since returning to the Davidsons' home, L.S. had been participating in church activities, such as children's choir, bible study, Sunday school, and a mission trip near Chicago.

¶ 49 When L.S. came into the Davidsons' care in January 2013, Emily spoke to L.S. about counseling and L.S. "was adamant that she did not want to see a counselor." After some time, Emily scheduled an appointment with a counselor, but that appointment was cancelled because of an illness. Ultimately, Emily arranged for counseling with a children's counselor that was recommended by her family doctor. At the time of the hearing, L.S. had attended two sessions with the counselor.

¶ 50 The Davidsons' family doctor had provided care to L.S. since she was 2 1/2 years old and was aware of her background and medical history. He had examined L.S. but had not performed an HIV test or any other blood tests. Emily testified the doctor "did not tell us of the need or the suspicion to poke her and prod her for anything." At one point, L.S. complained of discomfort in her genital area, so Emily took her to the doctor, who treated her for dry skin. Emily did not believe this was related to sexual abuse.

¶ 51 With respect to race, Emily testified that it was important and she was sensitive to

the fact L.S. is biracial. However, L.S.'s race did not make a difference to her and she only looked at L.S. as being her daughter. She thinks it is important to expose her children to "all different types of people from themselves" and "embrace all that is different about all people." L.S. has two biracial friends, one of whom L.S. had recently attended a slumber party with.

¶ 52 d. Scott Davidson's Testimony

¶ 53 Scott Davidson testified he was a licensed foster parent and worked as an Instructional Technology Coordinator for the Decatur Public Schools. He said L.S. was well adjusted into the Davidsons' family. According to Scott, L.S. drew a picture in school of her family that included Jessica, Emily, Scott, the Davidsons' other children, and herself. He testified he was "absolutely" ready, willing, and able to undertake the responsibility of adopting L.S.

¶ 54 Scott testified DCFS was not involved in placing L.S. with the Davidsons after Jessica's death. Rather, "it was completely up to the family." In response to the Shearers' counsel's question about whether he should have contacted the DCFS hotline, he responded, "[w]ith someone from the department present, I felt comfortable that the hotline report was sufficiently met."

¶ 55 He testified that sometime after January 2013, William contacted him and said John and Jacqueline were interested in caring for L.S. Scott expressed that he was "open to a conversation"; however, he did not hear back. The next time he was asked by the Shearers about having contact with L.S. was before the guardianship hearing. With respect to the visitation agreement that Scott and Emily proposed, Scott testified he felt he needed to create an environment of protection for L.S. from a group of people that had not been involved in her life.

He did not believe the Shearers posed a danger to L.S., but he testified that he does not "let [his] kids just visit [a person] arbitrarily without knowing them and having a relationship with them." He explained that his decision was "made out of love for this beautiful little girl." Since the guardianship proceedings, L.S. had two contacts with John and Jacqueline through video conferencing. William, John, and Jacqueline had sent Christmas cards and gifts to L.S., who had been given the items.

¶ 56 e. Other Witnesses' Testimony

¶ 57 Janie Kane, the director of the kindergarten through fifth grade children's ministry at the Davidsons' church, testified L.S. is an active participant at the church and "loves" to be part of the praise and worship time. Patricia Brewer, Emily's mother, testified she spends time with L.S. and "already feel[s] that [she] is my grandchild." Pamela Jones, the early-childhood director at the Davidsons' church, testified she had known L.S. for six years and described L.S.'s affection toward the other children in the Davidsons' home. David Campbell, who is a friend of the Davidsons, likewise testified L.S. got along well with the Davidsons' other children.

¶ 58 3. *The GAL's Report*

¶ 59 The GAL filed a report with the trial court, expressing his belief that both the Shearers and Davidsons appeared "fit, qualified, and ready, willing, and able to raise [L.S.] in a safe and loving environment." Nonetheless, the GAL recommended that the Davidsons' petition be granted. The GAL explained they, "at least to an extent, are a known quantity; most importantly, they, unlike the Shearers, are known to [L.S.]" The GAL stated L.S.'s "sense of security, familiarity, and attachment to the Davidsons was evident" during the GAL's home visit. The GAL opined that, based on L.S.'s past, it was not in her best interests to have her life further

disrupted by moving away from the home, community, family, friends, and support base that she knew. Following the evidentiary hearing, the GAL renewed his recommendation, pointing out "[L.S.] is well-integrated into a loving family with whom she is familiar and with whom she has lived with for approximately one-third of her young life."

¶ 60

#### D. The Trial Court's Decision

¶ 61 Following the hearing, the trial court took the matter under advisement. In March 2014, the trial court entered a written decision granting the Davidsons' petition and dismissing the Shearers' petition. With respect to the Shearers, the court found their interest in L.S. was "genuine and sincere," but that placement with them "would amount to placing [L.S.] with total strangers in a location far away from those persons who have provided [L.S.] with love, security, and stability." The court found it was apparent L.S. had "developed a very deep bond with the Davidson family" and "the Davidson family has provided [L.S.] with the only semblance of stability." The court found all of L.S.'s physical, mental, emotional, educational, and spiritual needs were being met by the Davidsons. Additional findings relevant to this appeal are discussed below.

¶ 62

In April 2014, the Shearers filed a notice of appeal. This court docketed Macon County case No. 13-CF-34 as No. 4-14-0276 and Macon County case No. 13-CF-36 as No. 4-14-0277.

¶ 63

## II. ANALYSIS

¶ 64

On appeal, the Shearers contend the trial court's decision was against the manifest weight of the evidence. Specifically, the Shearers assert the court's decision was against the manifest weight of the evidence because it failed to (1) consider expert testimony, (2) consider

the lack of a medical or psychological evaluation, (3) consider evidence of sexual abuse, (4) give them priority as L.S.'s blood relatives, (5) consider the State's "illegal involvement" in this case, (6) consider the "proper weight" of L.S.'s racial background, and (7) consider L.S.'s religious background. Further, the Shearers claim (1) the court failed to consider the best interest standard, (2) the GAL was not qualified to address the sensitive issues in this case and the GAL's report was deficient, and (3) "[n]o State authority acted in a manner to protect the constitutional due process of the minor." We address the Shearers' contentions in turn.

¶ 65 A. Preserving the Minor's Confidentiality

¶ 66 Before reaching the parties' substantive arguments, we find it important to note the requirements of Illinois Supreme Court Rule 341(f) (eff. Feb. 6, 2013). Rule 341(f), in relevant part, provides:

"In all appeals involving juveniles filed from proceedings under \*\*\* the Adoption Act \*\*\* the respective juvenile \*\*\* shall be identified by first name and last initial or by initials only.

\*\*\* The name of the involved juvenile \*\*\* shall not appear in the brief." Ill. S. Ct. R. 341(f) (eff. Feb. 6, 2013).

Further, section 18(d) of the Adoption Act, in relevant part, provides:

"If an appeal is taken from an adoption proceeding, the papers filed in the court of review \*\*\* shall not identify the true names of the parties; instead, initials or pseudonyms shall be used to identify the parties." 750 ILCS 50/18(d) (West 2012).

¶ 67 The Shearers' brief states L.S.'s full name on the *cover* of their brief and her first

and last names are used throughout the brief. This fails to comply with Rule 341(f). Both parties, in their appendices, have included the trial court's order, which states L.S.'s full name. This violates section 18(d) of the Adoption Act as it identifies the true name of the minor. We also note both parties' briefs fail to include the caption required by Illinois Supreme Court Rule 311(a)(1) (eff. Feb. 26, 2010). We remind the parties that Illinois Supreme Court rules "are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Bright v. Dicke*, 166 Ill. 2d 204, 210, 652 N.E.2d 275, 278 (1995). As striking the parties' briefs would create further delay in this child custody proceeding, we decline to strike the parties' briefs for noncompliance with Rules 341(f) and 311(a)(1).

¶ 68 We now turn to the statutory provisions governing this appeal.

¶ 69 B. Relevant Statutory Provisions

¶ 70 The Adoption Act specifies that the "best interests and welfare of the person to be adopted shall be of paramount consideration in the construction and interpretation of this Act." 750 ILCS 50/20a (West 2012). In all child custody cases, " 'the issue that singly must be decided is the best interest of the child.' " *In re Austin W.*, 214 Ill. 2d 31, 49, 823 N.E.2d 572, 583 (2005) (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879, 571 N.E.2d 905, 923 (1991)). "A child's best interest is not part of an equation" and " 'is not to be balanced against any other interest' "; rather, it " 'must remain inviolate and impregnable from all other factors.' " *Id.* (quoting *Ashley K.*, 212 Ill. App. 3d at 879, 571 N.E.2d at 923). Section 15.1(b) of the Adoption Act states that the court will consider all relevant factors, including but not limited to:

"(1) the wishes of the child;

(2) the interaction and interrelationship of the child with the applicant to adopt the child;

(3) the child's need for stability and continuity of relationship with parent figures;

(4) the wishes of the child's parent as expressed in writing prior to that parent's execution of a consent or surrender for adoption;

(5) the child's adjustment to his present home, school and community;

(6) the mental and physical health of all individuals involved;

(7) the family ties between the child and the applicant to adopt the child and the value of preserving family ties between the child and the child's relatives, including siblings;

(8) the background, age and living arrangements of the applicant to adopt the child;

(9) the criminal background check report presented to the court as part of the investigation required under Section 6 of this Act." 750 ILCS 50/15.1(b) (West 2012).

This court "will not overturn an adoption judgment involving the best interest of a child unless the circuit court clearly abused its discretion and the judgment was against the manifest weight of the evidence." *In re Adoption of C.D.*, 313 Ill. App. 3d 301, 307, 729 N.E.2d 553, 558 (2000).

¶ 71 Having outlined the legal framework, we turn now to the Shearers' contentions on appeal.

¶ 72 C. The Shearers' Arguments

¶ 73 1. *The Trial Court Failed To Consider the Best Interest Standard*

¶ 74 The Shearers contend the trial court failed to consider the best interest standard. (In their reply brief, the Shearers modify their language and contend the court did not "correctly apply" the standard.) They set forth the nine factors included in section 15.1(b) of the Adoption Act and provide arguments why it is in L.S.'s best interest for their petition to be granted. The record explicitly contradicts the assertion the court did not consider the best interest standard. The court's written order quotes section 15.1(b) of the Adoption Act and states "the court has considered each of the statutory factors." As for the Shearers' argument it is in L.S.'s best interest for the petition to be granted, their other arguments encompass that argument and it is addressed accordingly.

¶ 75 2. *The Trial Court Failed To Consider the Expert Testimony*

¶ 76 The Shearers assert the trial court failed to consider the weight of expert testimony. They argue the court did not give proper weight to (1) William's testimony L.S. may have been exposed to drugs and HIV and could have mental, social, and neurocognitive problems requiring professional help; (2) Ochs' testimony a psychological and medical evaluation were needed; and (3) Jacqueline's testimony that, when placing children with backgrounds similar to L.S.'s, her recommendation would be to place the child with family, especially if the family has a similar ethnic background.

¶ 77 The Shearers' contention this court can "overrule" a trial court and give "more

weight" to certain testimony is unpersuasive. Under the manifest-weight-of-the-evidence standard, "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Best v. Best*, 223 Ill. 2d 342, 350-51, 860 N.E.2d 240, 245 (2006). Reviewing courts afford such deference because the trial court, as the finder of fact, "is in the best position to observe the conduct and demeanor of the parties and witnesses." *Id.* at 350, 860 N.E.2d at 245. Further, the Shearers' reliance on *In re Yohan K.*, 2013 IL App (1st) 123472, 993 N.E.2d 877, is misplaced. *Yohan K.* was a child-abuse case that involved the testimony of 10 different medical experts about the child's medical condition and injuries. *Id.* ¶¶ 46-94, 993 N.E.2d 877. The State presented a "constellation" theory to explain the child's injuries. The appellate court found this theory allowed the trial court to find the child had been abused although "not one of his individual injuries within the constellation had been proven to be by abuse." *Id.* ¶ 146, 993 N.E.2d 877. The court added that, in contrast, the parents' experts "provided well-reasoned medical explanations, albeit rare ones, to explain each of his injuries." *Id.* According to the appellate court, the trial court disregarded the parents' medical experts because "a single, uniform medical condition could not explain every medical finding [the minor] presented." *Id.* ¶ 147, 993 N.E.2d 877. *Yohan K.* is distinguishable. There, the expert testimony was provided to explain the minor's documented injuries, which was critical to the issue of whether the child had been abused. In contrast, the expert testimony in the instant case was about what evaluations should have been performed on L.S. and whether potential health, mental, and social issues may arise. The Shearers provide no suggestion of how the trial court improperly considered this evidence.

¶ 78           The Shearers' argument amounts to an invitation to reweigh the expert testimony.

We will not do so. The trial court properly weighed Ochs', William's, and Jacqueline's testimony. Neither Ochs nor William had ever met L.S. Nor had they reviewed her medical, school, or other records. Nor had they reviewed Jessica's medical records. William's testimony about L.S.'s potential health and developmental problems was based on his belief that, as a drug user, Jessica might have engaged in risky behaviors and exposed L.S. to "unsavory characters." He did not have any personal knowledge of whether Jessica engaged in such behavior, exposed L.S. to such persons, or that L.S. actually had any health or developmental problems. The Shearers' brief quotes testimony attributed to Jacqueline about the assessments she performs as a social worker and what her professional recommendation would be for a child that had undergone the same trauma as L.S. Jacqueline did testify, based on her professional opinion, she was concerned L.S. may develop mental-health issues and should undergo a "biological, psychological and social evaluation." However, Jacqueline had never met L.S., reviewed any of her records, or observed anything indicating L.S. had mental-health issues.

¶ 79 We reject the Shearers' invitation to reweigh the expert testimony.

¶ 80 *3. The Trial Court Failed To Consider That L.S. Had Not Been Medically or Psychologically Evaluated*

¶ 81 The Shearers contend the trial court "failed to consider the lack of any specific medical or psychological evaluation or statement concerning [L.S.]" In their reply brief, the Shearers posit courts should "seek the best scientific information available to make decisions." The Shearers claim, based on L.S.'s background and Jessica's drug use, L.S. needed medical and psychological evaluations and counseling, yet the Davidsons had not taken L.S. to be evaluated or to counseling.

¶ 82 In its written order, the trial court considered the recommendations that L.S. undergo medical and psychological evaluations. The court found Emily had taken L.S. to a physician and a counselor, and there was no need to "poke and prod" L.S. by subjecting her to the evaluations suggested by Ochs, William, and Jacqueline. Thus, the record contradicts the Shearers' argument. Further, the court's findings are supported by the record. Not one of the experts testified that L.S.'s history predetermined her future well-being. Indeed, Ochs testified she could be resilient. Further, the Shearers did not present any evidence L.S. suffered from any medical or psychological problems. Emily testified that she had taken L.S. to see the family's physician, who did not raise any concerns about L.S.'s medical condition, and L.S. had also seen a counselor.

¶ 83 *4. The Trial Court Failed To Consider Evidence of Sexual Abuse*

¶ 84 The Shearers assert the trial court failed to consider evidence of sexual abuse—namely, that L.S. complained about pain and irritation in her genital region—and that the Davidsons failed to obtain a sexual-abuse evaluation or to investigate potential abusers in the household, church, or community where L.S. had been placed.

¶ 85 The Shearers made this same argument in their previous appeal. *L.S.*, 2014 IL App (4th) 130766-U, ¶¶ 69-70. They have not presented any new evidence indicating L.S. may have been sexually abused or that L.S.'s complaint is consistent with sexual abuse. Emily testified that she took L.S. to see the family's physician and the irritation in L.S.'s genital area was caused by dry skin. Although the doctor did not specifically evaluate L.S. for sexual abuse, he did not express any concern that L.S. was experiencing anything other than dry skin. Accordingly, the Shearers' contention that the trial court failed to consider evidence of sexual

abuse is unpersuasive.

¶ 86           5. *The Trial Court Failed To Give the Shearers Priority as Blood Relatives*

¶ 87           The Shearers argue, as they did in their previous appeal, the trial court failed to give them priority as L.S.'s blood relatives. We disagree.

¶ 88           This court has recognized the importance of preserving family ties in adoption cases. *C.D.*, 313 Ill. App. 3d at 309, 729 N.E.2d at 560. However, preservation of family ties is "merely one of the several factors to be considered" in determining what is in the best interest of the child. *Id.* In considering whether it is in the child's best interest to be adopted by an unrelated party, it is appropriate for the court to consider "the nature and length of the child's relationship with the present caretaker [citation], and the effect that a change of placement would have upon the emotional and psychological well being of the child." *In re Violetta B.*, 210 Ill. App. 3d 521, 534, 568 N.E.2d 1345, 1353 (1991). Indeed, recognizing the important bond that may be formed with a foster parent, section 15.1 of the Adoption Act (750 ILCS 50/15.1 (West 2012)) establishes "an adoption 'preference' for foster parents who had custody of the child for one year or more." *C.D.*, 313 Ill. App. 3d at 309, 729 N.E.2d at 560. Ultimately, the best interest of the child takes precedence over any familial relationship. *Violetta B.*, 210 Ill. App. 3d at 533, 568 N.E.2d at 1353.

¶ 89           Here, the evidence showed John and L.S. are first cousins, once removed. John and Jacqueline live in California and have never met L.S. They have communicated with her through video conferencing and included her in their Christmas gift-giving. In contrast, the Davidsons are L.S.'s former foster parents and legal guardians. L.S. had lived with the Davidsons several times since she was a young child and continuously since January 2013. She

has maintained a relationship with the Davidsons since she was 2 1/2 years old and developed a close bond with them. She treats their children as her brothers. While living with the Davidsons, L.S. continued to visit with her aunt and cousins who lived in central Illinois. The evidence supports the trial court's finding that L.S. was well-integrated into the Davidsons' family, community, and church. It is obvious that a move to California would upset the life L.S. has in Illinois. Considering the evidence, the court could have determined it was in L.S.'s best interest to have the Davidsons adopt her, even though the Shearers were L.S.'s blood relatives.

¶ 90           6. *The Trial Court Failed To Consider the "Illegal State Involvement"*

¶ 91           The Shearers next assert the trial court failed to consider "the illegal State involvement in this case." According to the Shearers, "evidence through the proceedings" established that Sites, an employee of Webster-Cantrell Hall, a facility in Decatur that works under DCFS authority, wrote a guardianship report making certain recommendations as to the placement of L.S. The Shearers contend that the report invoked federal and state standards governing DCFS placement of children. One of those rules requires that DCFS make reasonable efforts to locate a relative who is ready, willing, and able to care for the child, and to document the basis for a decision that placement with any identified relative is not in the child's best interests. 20 ILCS 505/7(b) (West 2012).

¶ 92           The Shearers made this same argument about Sites' guardianship report in the previous appeal and it was rejected. *L.S.*, 2014 IL App (4th) 130766-U, ¶¶ 72-74. Unlike in the guardianship proceedings, Sites testified in the instant case and the report, as an exhibit in the trial court, is contained in the record. In these proceedings, Sites testified Emily contacted her on January 21, 2013, to inform her the Davidsons were travelling to Charleston because Jessica had

died. Sites testified she was not involved in the decision to place L.S. with the Davidsons. Rather, the evidence shows this decision was made by L.S.'s grandmother, grandfather, and aunt. The Shearers provide no authority for their proposition that Sites' guardianship report somehow invoked DCFS's regulations.

¶ 93            Additionally, the Shearers assert Sites, Emily, and Scott were all obligated to "hotline" the case. The Shearers do not specify what was to be reported or what alleged abuse or neglect occurred. Further, the evidence shows L.S. was taken to the Charleston police department, where she met with a DCFS employee.

¶ 94            *7. The Trial Court Failed To Properly Weigh L.S.'s Racial Background*

¶ 95            The Shearers, as they did in their previous appeal, also claim the trial court failed to properly weigh L.S.'s racial background. Specifically, the Shearers point out that L.S. is biracial, while the Davidsons are Caucasian, and the Shearers live in a racially diverse community, while the Davidsons live in a "predominately white community."

¶ 96            We reject any suggestion this court should reweigh the evidence and determine the "proper weight" of certain evidence. The trial court's order explicitly considered the Shearers' concerns about L.S.'s race and identity and makes it clear that the court considered L.S.'s racial background as compared to the Davidsons. There was no evidence that L.S. suffered harm in her home, church, school, or community because she is biracial. Emily testified that she and Scott were active about exposing their children to people of diverse backgrounds and embracing diversity. Emily testified L.S. had friends that were biracial, and the Davidsons had previously adopted a biracial child. In its order, the court noted that Ochs testified a loving environment was more important to a child's well-being than the race of the child's parents.

Further, the court found the Davidsons were prepared to assist L.S. in understanding her racial heritage. In light of the evidence, we reject the Shearers' contention that the trial court failed to properly consider L.S.'s racial background.

¶ 97            8. *The Trial Court Failed To Consider L.S.'s Religious Background*

¶ 98            The Shearers, as they did in their previous appeal, contend the trial court failed to consider L.S.'s religious background. Specifically, they assert L.S. and her blood relatives are Catholic, while the Davidsons are members of a Protestant church. The Shearers note the Adoption Act provides the court, when "entering a judgment of adoption shall, whenever possible, give custody through adoption to a petitioner \*\*\* of the same religious belief as that of the child." 750 ILCS 50/15 (West 2012).

¶ 99            The trial court's written order explicitly shows the court considered L.S.'s religious background. Moreover, the evidence supports the court's findings. Emily testified Jessica granted her permission to take L.S. to First Christian Church in Decatur when L.S. was in her care. She testified that L.S. and Jessica attended First Christian Church in Charleston when L.S. was living with Jessica, and Jessica's funeral was officiated by a minister from that church. Several witnesses testified about L.S.'s involvement with First Christian Church and that she was active in church activities. No evidence was presented as to L.S.'s involvement with the Catholic Church, other than the Shearers' testimony that all of the Shearers were raised Catholic.

¶ 100          9. *The GAL Was Improperly Appointed, Unqualified, and Committed Malpractice*

¶ 101            The Shearers contend the GAL was improperly appointed, committed malpractice, and was unqualified to address the sensitive issues in this case. The Shearers made the same arguments about the GAL's qualifications and report in their previous appeal. *L.S.*,

2014 IL App (4th) 130766-U, ¶ 76. As the Davidsons point out, the record reflects the Shearers did not object to the GAL's appointment, qualifications, or report in the trial court. Accordingly, the Shearers have forfeited these claims on appeal. See *In re Samantha V.*, 234 Ill. 2d 359, 368, 917 N.E.2d 487, 493 (2009) (The failure to object at trial forfeits consideration of the claimed error on appeal.). Although the Shearers did raise, in the trial court, concerns regarding Judge Webber appointing a GAL after a motion to substitute judge naming Judge Webber was on file, they made no motion for a different GAL and agreed their concerns were not something the court needed to deal with. Thus, we will not reverse the trial court when it was not asked to take any action. Finally, we decline to consider the Shearers' argument the GAL committed malpractice because they did not present such an argument before the trial court.

¶ 102 In their reply brief, the Shearers assert that the GAL "abdicated \*\*\* his responsibility to make a recommendation that is in the best interest of the child." This is chiefly a complaint that the GAL recommended the Davidsons' petition be granted. The Shearers did not include this argument in their original brief and it is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief \*\*\*").

¶ 103 *10. The Shearers' Other Arguments*

¶ 104 The Shearers present various other arguments throughout their brief. They assert "scientific evidence dictates that the minor should be psychologically, physically, and medically evaluated." The entire section in support of this proposition consists of a quote from a law journal with no analysis. We decline to consider this assertion. See *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37, 992 N.E.2d 103 ("[F]ailure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument.").

¶ 105 The Shearers assert the Davidsons' adoption petition was untimely. The Shearers maintain L.S. became available for adoption on February 21, 2013, and a petition was required to be filed within 30 days of that date. See 750 ILCS 50/5 (West 2012). The Shearers filed their petition on July 29, 2013, and the Davidsons filed theirs on August 13, 2013. The Shearers raised this issue with the trial court prior to the start of evidence. Subsequent to the close of evidence, the Shearers filed a motion to dismiss the petition for adoption. The trial court denied the Shearers' motion in its memorandum opinion filed March 11, 2014.

¶ 106 The statutory provision cited by the Shearers allows the trial court to grant leave to file a petition for adoption at a later date if the statutorily required showing is made. According to Scott Davidson's testimony, he and Emily delayed filing a petition for adoption because, "the family was not ready and I was unwilling to go against their wishes." However, once the Shearers filed a petition for adoption, the Davidsons acted to assert their commitment to L.S. Given the trial court considered and ruled on the motion to dismiss the petition for adoption, it is clear the court determined the Davidsons made the required showing to file outside the 30 day period. See *People v. Howery*, 178 Ill. 2d. 1, 32, 687 N.E. 2d 836, 851 1997 ("[T]he trial court is presumed to know the law and apply it properly.").

¶ 107 The Shearers assert "no State authority acted in a manner to protect the constitutional due process of the minor." The Shearers summarily argue L.S. was deprived of due process because DCFS "failed to obey state law or its own procedures in establishing a case to be considered by the Court." As discussed above, the evidence shows the family—not a state actor—decided to place L.S. with the Davidsons and there is no evidence DCFS was involved in this case. Additionally, the Shearers argue L.S. has been deprived of her *habeas corpus* rights

because "[h]er current placement has imprisoned her in a situation in which she is separated from her race, blood relatives, religion, and heritage." "[H]abeas corpus is an appropriate means to collaterally attack an adoption order where that order is void for want of jurisdiction \*\*\*." *In re J.D.*, 317 Ill. App. 3d 419, 422, 739 N.E.2d 1036, 1039 (2000). The Shearers do not argue that the trial court was without jurisdiction to enter an adoption judgment.

¶ 108 D. The Davidsons' Arguments in Support of the Trial Court's Decision

¶ 109 In their brief, the Davidsons argue the trial court could not grant the Shearers' petition because they were not related to L.S. and they (1) had not met the six-month residency requirement as required by section 2 of the Adoption Act (750 ILCS 50/2 (West 2012)), (2) did not provide an investigation report as required by section 6 of the Adoption Act (750 ILCS 50/6 (West 2012)), and (3) had not obtained approval to remove L.S. from Illinois as required by the Interstate Compact on Placement of Children Act (45 ILCS 15/0.01 to 9 (West 2012)).

¶ 110 If we were to agree with the Davidsons, this argument would serve as a basis to affirm the dismissal of the Shearers' petition. As we have determined the trial court's decision was not against the manifest weight of the evidence, any comment on the Davidsons' argument in support of the court's decision would be advisory and we need not address it. See *Kanerva v. Weems*, 2014 IL 115811, ¶ 58.

¶ 111 III. CONCLUSION

¶ 112 For the reasons stated, we affirm the trial court's judgment.

¶ 113 No. 4-14-0276, Affirmed.

¶ 114 No. 4-14-0277, Affirmed.