2011 IL App (5th) 110031-U

NOS. 5-11-0031 & 5-11-0333 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.B.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Fayette County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 09-JA-9
	)	
Penny H.,	)	Honorable Allan F. Lolie and
	)	Honorable Ericka A. Sanders,
Respondent-Appellant).	)	Judges, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Donovan and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly declared the minor to be neglected, made her a ward of the court, and awarded guardianship to DCFS. The circuit court improperly terminated the mother's parental rights, however, because the evidence failed to show that termination was in the minor's best interests.

¶ 2 In this consolidated appeal, the respondent, Penny H., appeals the circuit court's order finding M.B.H. (born October 30, 2003) abused and neglected, making her a ward of the court, and awarding guardianship to the Department of Children and Family Services (DCFS). Penny also appeals the circuit court's subsequent order terminating her parental rights to M.B.H., her biological granddaughter whom she and her husband, Lawrence H., adopted in February 2009. We affirm the circuit court's order adjudicating M.B.H. abused and neglected, making her a ward of the court, and awarding DCFS guardianship. We reverse the circuit court's order terminating Penny's parental rights.

¶ 3 FACTS

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¶ 5 On September 15, 2009, the State filed a petition for adjudication of wardship, alleging that M.B.H. was an abused and neglected minor. See 705 ILCS 405/2-3(1)(b), (2)(i) (West 2008). In the petition, the State alleged that Lawrence had hit her, causing bruising to the left side of her face. On this date, the circuit court entered a temporary custody order, placing M.B.H. in the temporary custody of DCFS. The circuit court also appointed attorney Edwin Potter to represent Penny and Lawrence. The court noted that Penny's and Lawrence's interests were the same at that point, but if circumstances changed, Penny had the right to have her own attorney.

¶ 6 On October 5, 2009, attorney Potter indicated that although Penny's and Lawrence's interests had not diverged, he was concerned regarding the future potential for conflict. The circuit court then addressed Penny and Lawrence, advising them that alternate lawyers would be appointed for them if they or attorney Potter requested it. When asked whether they were satisfied to have attorney Potter representing both of them, Penny and Lawrence answered in the affirmative. Penny and Lawrence then agreed to the shelter care order, with no admission of abuse or neglect.

¶ 7 At the adjudicatory hearing held on November 23, 2009, Penny testified that she did not know that M.B.H. had a bruise until notified by school personnel. Penny testified that once she was notified of the bruise, she looked but did not see the bruise on M.B.H.'s face. Penny testified that M.B.H. told her that she had fallen out of the bed. Penny testified that she believed that the babysitter's son, Anthony Fladeland, bruised M.B.H.'s face. Penny testified that M.B.H. had been with the babysitter for several hours every day during the week prior to the school's recognition and report of the bruise. Penny testified that she disciplined M.B.H. by sitting her on the bed for time-out. Penny testified that Lawrence did

not discipline M.B.H. Penny testified that neither she nor Lawrence used corporal punishment on M.B.H.

¶ 8 Donna Cripe, the principal of Jefferson Primary School, testified that M.B.H. was in kindergarten on September 1, 2009, when the teacher notified her that M.B.H. had a facial bruise. Donna testified that when she saw M.B.H., she observed a red and purple bruise in the shape of a handprint on the left side of her face. Donna testified that M.B.H. had said that Lawrence had hit her for getting into trouble at school the day before.

¶ 9 Dennis Carie, a DCFS investigator, testified that on September 1, 2009, he went to M.B.H.'s elementary school to investigate the report. Dennis testified that he observed bruising on M.B.H.'s face. Dennis testified that M.B.H. told him that Lawrence had hit her in the face because she had stepped on the dog's tail. Dennis testified that he later interviewed Anthony regarding allegations that M.B.H. had fallen or been pushed down the steps. Carie testified that he determined it to be unlikely.

¶ 10 Lawrence testified that he did not babysit M.B.H. when Penny was not present and was never alone with her. Lawrence testified that he did not discipline M.B.H. and had never struck her. Lawrence testified that during the week leading up to September 1, 2009, M.B.H. was at the babysitter's home fairly often.

¶ 11 After hearing the evidence, the circuit court entered an order of adjudication. The circuit court found M.B.H. to be neglected and physically abused pursuant to section 2-3(2)(i) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(2)(i) (West 2008)). The circuit court found that Penny had left M.B.H. in Lawrence's custody and that Lawrence had hit M.B.H., causing her injury.

¶ 12 On December 18, 2009, attorney Potter filed a motion to withdraw as Lawrence's appointed counsel. In the motion, attorney Potter stated that he believed "there [was] a potential conflict of interest between" Lawrence and Penny. At the hearing on December

21, 2009, attorney Potter explained that while no conflict existed before the adjudicatory hearing, he believed there to be one at that time and requested to be relieved from representing Lawrence. On December 21, 2009, the circuit court discharged attorney Potter as Lawrence's attorney.

¶ 13 At a hearing on January 11, 2010, Penny requested new counsel, stating that attorney Potter did not properly represent her interests. Stating that if attorney Potter continued, conflict issues may arise, the circuit court appointed Penny a new attorney, attorney Patrick Schaufelberger.

¶ 14 On April 5, 2010, Lawrence filed a motion to rehear, which Penny adopted the following date. In the motion, Lawrence and Penny alleged that M.B.H. had been in the care of the babysitter, Millie Hensley, and her son, Anthony, and that Anthony was previously investigated for abusive behavior to minor children in his mother's care. Lawrence and Penny requested a new hearing on the basis of this new information.

¶ 15 At a hearing on April 19, 2010, after learning that Penny was again requesting new counsel, the circuit court admonished Penny that it would appoint one more attorney for her. On April 20, 2010, the circuit court granted attorney Schaufelberger leave to withdraw as Penny's attorney and appointed attorney Richard Day to represent her.

¶ 16 At a hearing on July 7, 2010, attorney Day stated to the circuit court that he had not met with Penny personally because she had failed to appear during scheduled appointments. The circuit court discharged attorney Day as Penny's attorney, noting that if Penny could not get along with attorney Day, she could not get along with anyone.

¶ 17 At the hearing on July 12, 2010, Lawrence failed to appear, and Penny requested the opportunity to hire an attorney. The circuit court denied Penny's request and entered a dispositional order, placing custody and guardianship of M.B.H. with DCFS, with the goal of returning M.B.H. home within one year. The circuit court noted that Penny "could

certainly take care of" M.B.H. "but for whatever reason [she had] refused to cooperate with the system."

¶ 18 However, on July 13, 2010, the circuit court, on its own motion, vacated its July 12, 2010, order denying Lawrence's and Penny's motion to reconsider and its dispositional order. The circuit court reaffirmed its ruling discharging attorney Day as Penny's attorney and its findings at the adjudicatory hearing. The circuit court admonished Penny and Lawrence that their parental rights may be terminated if they failed to cooperate with DCFS, failed to comply with the service plans, or failed to correct the conditions which caused M.B.H. to be in foster care.

¶ 19 On September 10, 2010, attorney Jeffrey DeLong, who had been appointed to represent Penny on August 25, 2010, filed a motion for leave to withdraw as Penny's attorney. At a hearing on September 27, 2010, attorney DeLong notified the court that Penny no longer wanted him to represent her. Penny requested a continuance to hire attorney Monroe McWard.

¶ 20 At a hearing on October 25, 2010, the circuit court granted Penny additional time to hire an attorney. At a hearing on December 22, 2010, Lawrence did not appear. Penny represented to the circuit court that she was unable to hire an attorney and requested that the circuit court appoint one. The circuit court denied Penny's request, denied the parties' motion to rehear, retry, or vacate the finding of adjudication, and proceeded with the dispositional hearing.

¶ 21 At the December 22, 2010, dispositional hearing, Penny testified that she had refused to follow the DCFS service plans because she was innocent and should not have had to do so. Penny offered into evidence a letter from Dr. Mark Day. In the letter, Dr. Day stated that Penny was not mentally ill. Penny testified that she did not trust DCFS's suggestions for a mental evaluation or for transportation to visitations. Penny testified that six months prior

to the bruising incident, she and Lawrence underwent mental health examinations and home studies to adopt M.B.H. Penny testified that she did not believe it was necessary to undergo additional evaluations. Penny acknowledged that she had last visited with M.B.H. two days before Easter 2010. Penny asserted that DCFS had denied her opportunities to phone or visit M.B.H.

¶ 22 The circuit court concluded that Penny had failed to comply with the DCFS service plans, had failed to visit M.B.H. for eight months, and had failed to show that she had a stable place to live. The circuit court made M.B.H. a ward of the court and awarded guardianship to DCFS. On January 18, 2011, Penny filed a notice of appeal from the circuit court's dispositional order.

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¶ 24 On December 22, 2010, the State also filed a petition to terminate Penny's and Lawrence's parental rights to M.B.H. and to appoint a guardian with the power to consent to adoption. In the petition, the State alleged that Penny had abandoned M.B.H. (750 ILCS 50/1(D)(a) (West 2008)); had failed to maintain a reasonable degree of interest, concern, or responsibility as to M.B.H's welfare (750 ILCS 50/1(D)(b) (West 2008)); had deserted M.B.H. for more than three months preceding the commencement of the action (750 ILCS 50/1(D)(c) (West 2008)); had failed to make reasonable efforts to correct the conditions that were the basis for the removal of M.B.H. within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2008)); and had failed to make reasonable progress toward the return of the child to her within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)).

¶ 25 On January 3, 2011, the circuit court entered an order, noting that the State had filed a motion to terminate parental rights and that Penny had requested appointment of counsel in open court. The circuit court granted Penny's request for appointment of additional

counsel and appointed attorney Twila Orr.

¶ 26 On May 27, 2011, at the hearing on the petition to terminate parental rights, the State presented the following testimony with regard to the nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)).

¶ 27 The client service plans, dated November 23, 2009, March 22, 2010, and September 15, 2010, required Penny to maintain contact with her counselor, make referral for a psychological evaluation, complete a psychological evaluation, keep current a signed release of information, participate in a parenting class, and attend counseling. Penny's progress was marked as unsatisfactory in that she failed to fulfill the requirements of the service plans. She did not obtain a psychological evaluation, did not attend counseling, did not attend family therapy, did not sign a release for medical information, and did not keep appointments with the caseworker.

¶ 28 At the hearing, Penny testified that she felt like an innocent person who should not have to comply with the service plans. Penny testified that she had told Cassandra Crawford, M.B.H.'s caseworker, that she would not allow her in her home because she did not trust DCFS. Penny testified that she offered to acquire her own psychological evaluation because she did not want to be subjected to an evaluator chosen by DCFS.

¶ 29 After hearing evidence, the circuit court entered default judgment against Lawrence and determined that Penny was unfit for, *inter alia*, failing to make reasonable progress toward the return of the children to her within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)).

¶ 30 At the best interests hearing on July 20, 2011, Cassandra testified that she was a caseworker with Camelot Care Center and had worked as M.B.H.'s primary caseworker for the previous one year and seven months. Cassandra testified that prior to Camelot Care Center's involvement, M.B.H. had experienced three DCFS placements. Cassandra testified

that M.B.H. had had three additional placements while with Camelot Care Center. Cassandra testified that most recently, M.B.H. had lived with "Becky" for eight or nine months. Cassandra testified that Becky was not an adoptive placement but offered an affectionate, structured environment for M.B.H.

¶ 31 Cassandra testified that M.B.H. had behavioral problems and required a structured home with close supervision. Cassandra testified that M.B.H.'s stealing, temper tantrums, and breaking items had caused difficulties in her placement. Cassandra testified that prior to Becky, M.B.H. stayed with "Lurene and Gene" for 11 months. Lurene and Gene requested that M.B.H. move after she broke the leg of one of their puppies. Cassandra testified that at Lurene and Gene's home, M.B.H. also allegedly tried to pull down the pants of a boy who also lived in the home.

¶ 32 Cassandra testified that prior to Lurene and Gene, M.B.H. was placed with "Debra" for a few weeks, until M.B.H.'s issues could be identified for an appropriate placement. Cassandra testified that Penny had reported abuse in this home to the DCFS hotline, it was investigated, and it was determined to be unfounded. Cassandra admitted that during a visit between Penny and M.B.H., while M.B.H. was in foster care, Penny observed bruising on M.B.H.

¶ 33 Cassandra testified that there was a potential adoptive placement for M.B.H., and if Penny's parental rights were terminated, M.B.H. would gradually have visits with the potential adoptive parent to prepare her for an adoptive home, where she would begin therapy for reactive attachment disorder. Cassandra testified that the potential placement for adoption was "Paula," who was a foster parent with a Springfield agency. Cassandra testified that M.B.H. could not undergo therapy for her reactive attachment disorder without a permanent caregiver.

¶ 34 Cassandra testified that she had had no opportunity to inspect Penny's home because

Penny would not allow it. Cassandra testified that she was also unable to discuss M.B.H.'s educational goals with Penny.

¶ 35 Lauren Yoggerst, an in-home counselor with Camelot Care Center, testified that she facilitated two therapy sessions per week with M.B.H., in addition to family counseling in the home with M.B.H.'s foster parent. Lauren testified that M.B.H. had fairly severe behavioral issues, including problems with aggression, lying, and stealing. Lauren testified that M.B.H. had been diagnosed with attention deficit disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, and reactive attachment disorder.

¶ 36 Lauren testified that with regard to her reactive attachment disorder, M.B.H. displays symptoms that she is unable to attach appropriately to adults, as well as peers, so her attachments are generally only surface ones. Lauren testified that M.B.H. required attachment therapies with a permanent caregiver. Lauren testified that M.B.H. could not begin such therapy if she were to maintain her connection to Penny, because Penny was not cooperating with DCFS. Lauren acknowledged that on the day of the hearing, she observed Penny visit with M.B.H. and that M.B.H. acted well-behaved and said that she loved Penny.

¶ 37 Lauren testified that respite care occurs when the permanent foster parent is going out of town or away for a few days and needs childcare. Lauren testified that during one respite placement, M.B.H. poured a bottle of shampoo into the fish tank and stated that she wanted to kill the fish.

¶ 38 Lorna Carter, a friend of Penny's, testified that she had known Penny for 10 years and observed Penny and M.B.H. playing in Penny's home and in M.B.H.'s room. Lorna described M.B.H. as well-behaved and described M.B.H. and Penny's relationship as an appropriate and loving mother-daughter relationship. Lorna testified that every day M.B.H. rode the school bus, Penny stood with M.B.H. at the bus stop in the morning and was there when M.B.H. was dropped off.

¶ 39 Janet Aukamp, Penny's next-door Vandalia neighbor of 14 years, testified that Penny was honest and clean and kept her property in order. Janet testified that while M.B.H. lived with Penny, she observed M.B.H. and Penny playing in the pool and yard, and M.B.H. acted appropriately with Penny and with Janet's dogs. Janet testified that she first met M.B.H. when she was approximately 4 years old and observed her until she was about 5½.

¶ 40 Mary Aukamp, Penny's coworker and Janet's sister, testified that she observed Penny and M.B.H. at Penny's Vandalia home. Mary testified that she observed Penny and M.B.H. appropriately playing in the yard with the dogs. Mary testified that Penny and M.B.H.'s interactions led her to believe that they had a close relationship.

¶ 41 Debbie Stout, a coworker and friend of Penny's, testified that she observed M.B.H. when M.B.H. lived with Penny. Debbie testified that Penny's home was clean and safe and that M.B.H.'s room was appropriate. Debbie testified that M.B.H. was sufficiently fed and wore clean clothes. Debbie testified that she observed Penny and M.B.H. hug often and that M.B.H. was happy, obedient, and respectful. Debbie testified that she at no time saw Lawrence physically discipline M.B.H.

¶ 42 Shannon Thompson-Black, Penny's friend, testified that she had known Penny for approximately 15 years. Shannon testified that when M.B.H. lived with Penny, she visited Penny's home one to five times a week and observed that M.B.H. and Penny had a close, loving relationship. Shannon testified that M.B.H. acted appropriately with her dogs and with M.B.H.'s own dog, Joe. Shannon testified that Penny cooked appropriate foods and provided clean clothing. Shannon testified that she observed M.B.H. and Penny walking around the yard holding hands and heard M.B.H. tell Penny that she loved her.

¶ 43 Shannon testified that, directly prior to the hearing, she observed visitation between M.B.H. and Penny. Shannon testified that she, Penny, M.B.H., and Cassandra were present. Shannon testified that she observed Cassandra prohibit M.B.H. from hugging Penny.

Shannon testified that after the visit, Cassandra stuck a picture in Penny's face and, in a mean, loud voice, said, "This is the picture that you said was thrown away." Shannon testified that she observed a bond between Penny and M.B.H. and that they were happy to see each other. Shannon testified that, during the visit, she heard M.B.H. tell Penny that she loved her and wanted to come home.

¶ 44 Sherri Wohltman, Penny's attorney's secretary, testified that on June 14, 2011, she accompanied Penny on a visitation with M.B.H. at the Camelot Care Center in Springfield. Sherri testified that when M.B.H. arrived, she ran into Penny's arms. Sherri testified that Cassandra and Shelley Husemann were also present during the visitation. Sherri heard M.B.H. ask to go to Penny's home. Sherri testified that she observed a close relationship between Penny and M.B.H., that they hugged each other, and that M.B.H. climbed on Penny's lap and said, "I remember when I used to sit on your lap and you would rock me." Sherri testified that, at the end of the visit, M.B.H. stated that when she was older, she would go home with Penny. Sherri testified that the Camelot Care Center employees did not provide Penny a promised $40 gas card but provided a $25 gas card instead.

¶ 45 Sherri testified that she also observed a July 8, 2011, visitation between Penny and M.B.H. in Vandalia. Sherri testified that M.B.H. was happy to see Penny and that she and Penny made crafts that Penny provided. Sherri testified that she heard M.B.H. tell Penny that she loved her. Sherri testified that, from observing the two vistations, she believed that Penny and M.B.H. had a close relationship.

¶ 46 Melanie Schaafsma, Ph.D., a counselor and family therapist, testified that she performed a bonding assessment for Penny at no charge. Dr. Schaafsma testified that she observed M.B.H. and Penny on two occasions, on June 23 and July 8, 2011. Dr. Schaafsma observed tension between Penny and Cassandra on these occasions. Dr. Schaafsma described Penny and M.B.H.'s interaction as "very loving." Dr. Schaafsma testified that

Penny and M.B.H. were hugging and smiling and that M.B.H. told Penny that she loved her. Dr. Schaafsma testified that M.B.H. did not show the closeness to Cassandra or Becky that she showed to Penny. Dr. Schaafsma testified that M.B.H. wanted to be as close to Penny as possible, including next to her and on her lap. Dr. Schaafsma heard M.B.H. state that she wanted to return to Penny's home. Dr. Schaafsma concluded that Penny and M.B.H. were well-bonded.

¶ 47 Dr. Schaafsma testified that moving a child repeatedly, to six homes in a two-year period, can complicate reactive attachment disorder. Dr. Schaafsma testified that she understood that there was no one, except Penny, who was a continuous attachment figure for M.B.H. Dr. Schaafsma concluded that it was not in M.B.H.'s best interests to terminate Penny's parental rights.

¶ 48 Penny, M.B.H.'s biological father's mother, testified that she lived in Dupo with Lawrence and had previously lived in Vandalia, Illinois. Penny testified that Lawrence had cancer, had no energy, and slept 15 hours a day. Penny testified that she took Lawrence to Springfield, Missouri, to the hospital approximately two times a month. Penny testified that the physicians had told Lawrence that he was dying.

¶ 49 Penny testified that prior to entering foster care in July 2006, M.B.H. had been living with her biological mother in an Oklahoma home where methamphetamine was being produced. Penny testified that in July 2006, M.B.H. began living with her and Lawrence. Penny testified that she and Lawrence underwent a police background check through the state police and the Federal Bureau of Investigation, a home study through Lutheran Family Services, and mental evaluations. Penny testified that prior to July 2006, she had seen M.B.H. approximately four or five times during trips to Oklahoma.

¶ 50 Penny testified that she and M.B.H. had a loving relationship and that M.B.H. wanted to be physically close to her, sitting on her lap or standing beside her. Penny testified that

after she adopted M.B.H., she cared for her by bathing her, fixing her hair, feeding her, preparing her for school, and going on field trips. Penny testified that she taught M.B.H. her alphabet and numbers and how to write her name. Penny testified that she helped M.B.H. with her homework and her bedtime routine. Penny testified that she loved M.B.H. very much.

¶ 51 Penny testified that her Dupo home included three bedrooms. Penny testified that if M.B.H. were allowed to live there, she would have her own bedroom, in addition to a big wooden swing set in the backyard. Penny offered into evidence pictures of her home, including a picture of M.B.H.'s room. Penny testified that she had sufficient income and financial resources to care for M.B.H. Penny testified that she had no reason to believe that Lawrence would harm M.B.H. and that, due to his condition, he would be physically unable to cause harm.

¶ 52 Penny testified that she had enjoyed approximately eight visits with M.B.H. in the previous six months. Penny testified that her visits with M.B.H. were positive and that she also sent cards to M.B.H. She offered into evidence copies of the cards she sent to M.B.H. between their monthly visits. Penny requested telephone conversations with M.B.H., but Cassandra and Shelley had denied her requests.

¶ 53 Penny testified that she did not believe that M.B.H's foster placements were beneficial to her. Penny testified that on September 14, 2009, M.B.H. was placed with Tracey Lidster. In December 2009, M.B.H. was moved to Belleville Specialized Care because, Penny stated, Tracey had grabbed M.B.H. by the back of the neck and bruised her. In the same month, M.B.H. was moved from Belleville Specialized Care to Debra's home, where, Penny stated, M.B.H. was removed because Debra bruised the palm of M.B.H's hand with a stick. Penny testified that on December 23, 2009, she took photographs, introduced into evidence, of M.B.H.'s right hand, which Penny described as bruised.

¶ 54 Penny testified that in January 2010, M.B.H. was moved to Lurene and Gene Crane's home. Penny testified that during a previous hearing, Lurene testified that one of the boys in the home had stated that he and M.B.H. were "going to have sex" and that Lurene had allowed them to get under the covers together. Penny testified that M.B.H. was thereafter transferred to Becky's home. Penny testified that on July 8, 2011, M.B.H. told her that Becky only allowed in M.B.H.'s bedroom a bed, a table and chairs, and two baby dolls. Penny testified that M.B.H. had also stated that a picture had fallen off the dresser and that Becky had thrown it away. Penny testified that during her visitation with M.B.H. on the day of the hearing, Cassandra had stuck a picture in her face and said, "[H]ere's the picture that you said got thrown away." Penny testified that M.B.H. witnessed the exchange and looked scared and stunned.

¶ 55 Penny testified that she was also concerned with the medications M.B.H. had been administered while in foster care. Penny testified that M.B.H. was placed on Strattera, then Concerta, and was administered clonidine, a sleeping pill, three times daily. Penny testified that M.B.H. was also being administered trazodone.

¶ 56 Penny testified that if M.B.H. were returned to her, she would obtain counseling for her. Penny testified that M.B.H. had a dog at her home and that M.B.H. had always behaved gently and appropriately to the dog. Penny testified that she was willing to move away from Lawrence and would care for him while M.B.H. was at school.

¶ 57 On cross-examination, Penny acknowledged that the circuit court had admonished her to cooperate with DCFS but that she had refused to sign a medical consent form and had refused to undergo a psychological exam by a DCFS-approved psychiatrist. Penny testified that she had undergone an integrated assessment before the adjudicatory hearing and was willing to comply with the DCFS service plan, if she were allowed to choose her own psychological experts and parenting classes. Penny testified that she did not want DCFS or

Camelot Care Center in her home but that she would consider allowing another agency into her home. Penny testified that she did not trust DCFS or Camelot Care Center agents.

¶ 58 Penny testified that she had previously cooperated with DCFS by undergoing a home study. Penny offered into evidence an adoptive home study completed October 1, 2007. At that time, M.B.H. had resided with Penny and Lawrence for over one year. The study indicated that Penny and Lawrence lived in a quiet area in Vandalia, that the residence was appropriate, and that M.B.H. was bonded and attached to them.

¶ 59 Penny also offered into evidence a case supplemental report dated September 12, 2009. In it, the investigator, G.W. Vandenhout, asked M.B.H. questions to which she responded that "Papa punched" her in the head, Anthony threw her down the steps, and Anthony touched her in her "private."

¶ 60 At the end of the hearing, the circuit court denied Penny's request for an *in camera* interview with M.B.H. The circuit court concluded that it was in M.B.H.'s best interests to terminate Penny's parental rights. Accordingly, on August 2, 2011, the circuit court entered an order terminating Penny's parental rights. The court entered a default judgment against Lawrence. On August 5, 2011, Penny filed a notice of appeal.

¶ 61 ANALYSIS

¶ 62 Appeal No. 5-11-0031

¶ 63 The step-by-step process used to decide whether a child should be removed from his or her parents and made a ward of the court is set forth in the Juvenile Court Act of 1987 (the Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2008)). "Pursuant to section 2-13 of the [Juvenile Court] Act, the State may file a petition on behalf of any minor child who is alleged to be neglected, abused or dependent." *In re M.B.*, 332 Ill. App. 3d 996, 1002 (2002); 705 ILCS 405/2-13 (West 2008). "The petition must allege, with sufficient factual detail, the abuse, neglect and/or dependency of the minor and, in cases where the State seeks

an adjudication of wardship, as the State did in this case, the petition shall assert that the interests of the minor and public would best be served by having the minor adjudged a ward of the court." *In re M.B.*, 332 Ill. App. 3d at 1002; 705 ILCS 405/2-13(2), (3) (West 2008).

¶ 64 "Upon the filing of a petition for wardship by the State, the [Juvenile Court] Act provides that a temporary custody hearing shall be held during which the court shall determine whether there is probable cause to believe that the child is neglected, whether there is an immediate and urgent necessity to remove the child from the home[,] and whether reasonable efforts have been made to prevent the removal of the child or that no efforts reasonably can be made to prevent or eliminate the necessity of removal." *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004); 705 ILCS 405/2-10 (West 2008).

¶ 65 Following placement of a child in temporary custody, the circuit court must hold an adjudicatory hearing solely to determine whether the State's allegations of neglect, abuse, and/or dependency are supported by a preponderance of the evidence. *In re M.B.*, 332 Ill. App. 3d at 1002-03; 705 ILCS 405/1-3(1), 2-21(1), 2-18 (West 2008). Section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2008)) defines a "neglected minor" as "any minor under 18 years of age whose environment is injurious to his or her welfare." "Generally, 'neglect' is defined as the ' "failure to exercise the care that circumstances justly demand." ' " *In re Arthur H.*, 212 Ill. 2d at 463 (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000) (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624 (1952))). "However, this does not mean that the term 'neglect' is limited to a narrow definition; to the contrary, 'neglect,' by necessity, has a fluid meaning." *In re Arthur H.*, 212 Ill. 2d at 463. "Accordingly, cases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances." *In re Arthur H.*, 212 Ill. 2d at 463. "This analytical principle underscores the 'fact-driven nature of neglect and injurious environment rulings.' " *In re Arthur H.*, 212 Ill. 2d at 463 (quoting *In re N.B.*,

191 Ill. 2d at 346).

¶ 66 "A proceeding for adjudication of wardship 'represents a significant intrusion into the sanctity of the family which should not be undertaken lightly.' " *In re Arthur H.*, 212 Ill. 2d at 463 (quoting *In re Harpman*, 134 Ill. App. 3d 393, 396-97 (1985)). "It is the burden of the State to prove allegations of neglect by a preponderance of the evidence." *In re Arthur H.*, 212 Ill. 2d at 463-64. "In other words, the State must establish that the allegations of neglect are more probably true than not." *In re Arthur H.*, 212 Ill. 2d at 464. "On review, a trial court's ruling of neglect will not be reversed unless it is against the manifest weight of the evidence." *In re Arthur H.*, 212 Ill. 2d at 464. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 67 "If the State fails to prove the allegations of abuse, neglect or dependence by a preponderance of the evidence, the court must dismiss the petition." *In re Arthur H.*, 212 Ill. 2d at 464; 705 ILCS 405/2-21(1) (West 2008). "A finding of abuse, neglect or dependence is jurisdictional, ' "without [which] the trial court lacks jurisdiction to proceed to an adjudication of wardship." ' " *In re Arthur H.*, 212 Ill. 2d at 464 (quoting *In re M.B.*, 235 Ill. App. 3d 352, 377 (1992) (quoting *In re Shawn B.*, 218 Ill. App. 3d 374, 380 (1991))).

¶ 68 "[T]he [Juvenile Court] Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the parents are neglectful, [and] furthers the purpose and policy of the Juvenile Court Act, which is to ensure the best interests and safety of the child." *In re Arthur H.*, 212 Ill. 2d at 467; 705 ILCS 405/1-2 (West 2008). "A contrary result would lead to the unacceptable proposition that a child who is neglected by only one parent would be without the protections of the [Juvenile Court] Act." *In re Arthur H.*, 212 Ill. 2d at 467. "Similarly, a child would have no protection under the [Juvenile Court] Act if the child were neglected, but it could not be determined which

parent's conduct caused the neglect." *In re Arthur H.*, 212 Ill. 2d at 467. "The General Assembly could not have intended such absurd results." *In re Arthur H.*, 212 Ill. 2d at 467.

¶ 69 If the circuit court finds the minor abused, neglected, and/or dependent, the court must then proceed to the second adjudicatory stage, a dispositional hearing, at which the court determines whether " 'it is consistent with the health, safety and best interests of the minor and the public that [the minor] be made a ward of the court.' " *In re Arthur H.*, 212 Ill. 2d at 464 (quoting 705 ILCS 405/2-21(2) (West 2000)); 705 ILCS 405/2-21(1) (West 2008); 705 ILCS 405/1-3(16) (West 2008) (" 'Ward of the court' means a minor who is so adjudged under Section 2-22 *** and thus is subject to the dispositional powers of the court ***."). "If such a determination is made, the court must then determine the proper disposition of the matter in light of the health, safety and best interests of the minor and the community." *In re M.B.*, 332 Ill. App. 3d at 1003; 705 ILCS 405/2-22(1) (West 2008). In any proceeding initiated pursuant to the Juvenile Court Act, including an adjudication of wardship, the paramount consideration is the best interests of the child. *In re Arthur H.*, 212 Ill. 2d at 464.

¶ 70 "In a juvenile case, the adjudicatory order is generally not appealable because it is not a final order." *In re J.J.*, 316 Ill. App. 3d 817, 825 (2000), *aff'd*, 201 Ill. 2d 236 (2002). "Rather, claims pertaining to the adjudicatory hearing are appealable upon entry of the court's dispositional order, which is final." *In re J.J.*, 316 Ill. App. 3d at 825-26. A "[d]ispositional hearing" is one "to determine whether a minor should be adjudged to be a ward of the court, and to determine what order of disposition should be made in respect to a minor adjudged to be a ward of the court." 705 ILCS 405/1-3(6) (West 2008). "A dispositional order is final because it may change the status or rights of the parties; for example, it might alter custody or guardianship." *In re Faith B.*, 349 Ill. App. 3d 930, 935 (2004); 705 ILCS 405/2-23 (West 2008).

¶ 71 "Section 2-23 of the [Juvenile Court] Act authorizes the circuit court to enter

dispositional orders for the custody or placement of abused and neglected minors." *In re M.B.*, 332 Ill. App. 3d at 1003; 705 ILCS 405/2-23 (West 2008). "Of the particular kinds of dispositional orders authorized, a minor found abused, neglected or dependent may be kept in the custody of her parents." *In re M.B.*, 332 Ill. App. 3d at 1003; 705 ILCS 405/2-23(1)(a) (West 2008). "However, 'custody of the minor shall not be restored to any parent *** whose acts or omissions or both have been identified, pursuant to subsection (1) of Section 2-21, as forming the basis for the court's finding of abuse or neglect, until such time as a hearing is held on the issue of the best interests of the minor and the fitness of such parent *** to care for the minor without endangering the minor's health or safety, and the court enters an order that such parent *** is fit to care for the minor.' " *In re M.B.*, 332 Ill. App. 3d at 1003 (quoting 705 ILCS 405/2-23(1)(a) (West 2000)).

¶ 72 Penny argues that the circuit court erred in failing to make specific and detailed findings against her in the order of adjudication dated November 23, 2009, and in the dispositional order of December 22, 2010.

¶ 73 Section 2-21(1) of the Juvenile Court Act provides, in pertinent part:

> "The court's determination of whether the minor is abused, neglected, or dependent shall be stated in writing with the factual basis supporting that determination.
>
> If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the factual basis supporting that determination, and specify, to the extent possible, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court." 705 ILCS 405/2-21(1) (West 2008).

"[W]here an oral pronouncement is explicit and sufficient to advise the parties of the court's reasoning, the statutory requirement of a written explanation will be satisfied." *In re Leona*

W., 228 Ill. 2d 439, 459 (2008).

¶ 74 In the present case, at the adjudicatory hearing on November 23, 2009, the circuit court stated the following:

> "I'm going to find *** that the minor has been proved to be abused and neglected.
>
> It's my finding based on the testimony I have heard *** that *** Lawrence *** hit the minor, causing injury. And she is abused for that reason. She is neglected by reason of the fact that she was left in the custody of [Lawrence] by Penny."

¶ 75 In the written order of adjudication entered on the same date, the circuit court adjudicated M.B.H. abused and neglected, pursuant to section 2-3(2)(i) of the Juvenile Court Act. 705 ILCS 405/2-3(2)(i) (West 2008) (those who are abused include any minor whose parent inflicts upon such minor physical injury). Because the circuit court orally pronounced the factual basis supporting its determination and specified the acts or omissions of each parent, the lack of detail in the actual written order worked no prejudice on any of the parties. See *In re Leona W.*, 228 Ill. 2d at 458.

¶ 76 Penny likewise argues that the written order entered after the dispositional hearing did not contain adequate factual findings.

¶ 77 "As an alternative to ordering the minor kept in parental custody, the court may place the minor in accordance with section 2-27 of the [Juvenile Court] Act." *In re M.B.*, 332 Ill. App. 3d at 1003. Section 2-27 of the Juvenile Court Act provides in relevant part:

> "(1) If the court determines and puts in writing the factual basis supporting the determination of whether the parents *** of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the

custody of his or her parents ***, the court may at this hearing and at any later point:

* * *

(d) commit the minor to the Department of Children and Family Services for care and service ***." 705 ILCS 405/2-27(1)(d) (West 2008).

¶ 78 "[T]he writing requirement contained in section 2-27(1) exists to give the parties notice of the reasons forming the basis for the removal of the child and to preserve this reasoning for appellate review." *In re Madison H.*, 215 Ill. 2d 364, 374 (2005). "Explicit oral findings stated during a dispositional hearing advise the parties of the basis for the removal of the minor and, once transcribed, provide an equal opportunity to review the validity of the findings on appeal as well as written findings contained in an order." *In re Madison H.*, 215 Ill. 2d at 374-75.

¶ 79 In the dispositional order form entered on December 22, 2010, the circuit court held that Penny was unwilling to care for, protect, train, or discipline the minor and was unfit; that reasonable efforts had been made to prevent the need for removal of the minor from the home; and that appropriate services aimed at family preservation and reunification had been unsuccessful. The circuit court concluded that it was in M.B.H.'s best interests to remove her from her parent's custody and awarded guardianship to DCFS. At the dispositional hearing, the circuit court found that because Penny had failed to comply with the DCFS service plan, had failed to visit M.B.H. for eight months, and had failed to show she had a stable place to live, it was adjudicating M.B.H. a ward of the court. Thus, the circuit court resolved either orally or in writing the factual issues at the adjudicatory and dispositional hearings, and these findings were sufficient to comply with the Juvenile Court Act. 705 ILCS 405/2-27(1) (West 2008).

¶ 80 Penny next argues that the circuit court erred in failing to hold a dispositional hearing within the statutory time frame.

¶ 81 Section 2-21(2) of the Juvenile Court Act provides, in pertinent part:

> "If *** the court determines and puts in writing the factual basis supporting the determination that the minor is either abused or neglected or dependent, the court shall then set a time not later than 30 days after the entry of the finding for a dispositional hearing *** to be conducted under Section 2-22 at which hearing the court shall determine whether it is consistent with the health, safety and best interests of the minor and the public that he be made a ward of the court. *** The dispositional hearing may be continued once for a period not to exceed 30 days if the court finds that such continuance is necessary to complete the dispositional report." 705 ILCS 405/2-21(2) (West 2008).

"The time limits of this Section may be waived only by consent of all parties and approval by the court, as determined to be consistent with the health, safety and best interests of the minor." 705 ILCS 405/2-21(3) (West 2008). "On its own motion or that of the State's Attorney, a parent, *** or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence, *** but in no event shall continuances be granted so that the dispositional hearing occurs more than 6 months after the initial removal of a minor from his or her home." 705 ILCS 405/2-22(4) (West 2008).

¶ 82 Section 2-22 of the Juvenile Court Act does not contain any language identifying a penalty for failing to comply with the six-month time period. See *In re John C.M.*, 382 Ill. App. 3d 553, 567 (2008) (because section 2-14 contains language requiring dismissal without prejudice of a petition for serious delay in the adjudication of abuse, the legislature's failure to include the dismissal language in section 2-22 involving the dispositional hearing appears to be a deliberate exclusion). Nevertheless, in failing to comply with the Juvenile Court Act's limitations, the circuit court's judgment is not void, but the judgment is potentially voidable. *In re John C.M.*, 382 Ill. App. 3d at 568.

¶ 83 However, "[w]hen a party fails to object at the hearing that the time periods of the [Juvenile Court] Act were exceeded, parties have been found to have forfeited the issue." *In re John C.M.*, 382 Ill. App. 3d at 567; *In re John Paul J.*, 343 Ill. App. 3d 865, 874 (2003) (failure to conduct adjudicatory hearing within 90 days under section 2-14 forfeited when petitioner failed to file motion to dismiss petition for adjudication); *In re S.W.*, 342 Ill. App. 3d 445, 452 (2003) (petitioner waived the time requirements of section 2-14 by failing to file motion to dismiss in circuit court).

¶ 84 In the present case, M.B.H. was removed from Penny's care on September 13, 2009. An initial dispositional hearing was held 10 months later, on July 12, 2010; however, the order was vacated the following day. Another dispositional hearing was held on December 22, 2010, over 15 months from M.B.H.'s removal. Although such a delay causes a judgment to be potentially voidable, she did not at the hearing object that any time periods of the Juvenile Court Act were being exceeded. Instead, she repeatedly delayed the proceedings per her continued requests for appointment of new counsel. Penny cannot now complain of delays she herself supported and to which she agreed. See *In re John C.M.*, 382 Ill. App. 3d at 567-68.

¶ 85 Penny next argues that the circuit court erred in finding on August 25, 2010, and January 24, 2011, that DCFS was making reasonable efforts toward a goal of returning M.B.H. to her home and reunifying the family and that in making these findings, the court may have improperly relied on reports in the records, without stipulations or witness testimony.

¶ 86 On August 25, 2010, the State argued that because the previous dispositional order had been vacated, the circuit court should make a finding that DCFS services had been provided and reasonable efforts had been made towards reunification. The State explained that, for purposes of federal monies, federal regulations required that the juvenile cases move

toward permanency. See 45 C.F.R. § 1356.21(b)(2) (2010) (state agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect within 12 months of the date the child is considered to have entered foster care). Thus, in entering the finding that DCFS had made reasonable efforts to reunite the family, the court stated to Penny, "[The court's finding is] not going to prejudice you in relation to a disposition." On January 24, 2011, after the adjudicatory and dispositional hearing, the circuit court again entered an order finding that DCFS had made reasonable efforts towards returning M.B.H. home.

¶ 87 Penny fails to show how these findings or the potential reliance on the record to enter these findings affected either the adjudicatory hearing or the dispositional hearing. Penny cites *In re April C.*, 326 Ill. App. 3d 245 (2001), as support for her argument. However, as noted in *In re April C.*, error in the exclusion or admission of evidence is harmless if there has been no prejudice. See *In re April C.*, 326 Ill. App. 3d at 261-62. Likewise, Penny fails to show how she was prejudiced by the circuit court's findings.

¶ 88 Penny next argues that the circuit court erred in providing counsel at the adjudicatory hearing with a clear conflict of interest and then failing to provide counsel to her at the motion to rehear and at the dispositional hearing.

¶ 89 Section 1-5 of the Juvenile Court Act (705 ILCS 405/1-5 (West 2008)) provides that minors and their parents have the right to be represented by counsel in a juvenile proceeding. If a party requests counsel and is unable to afford the fees, the trial court must appoint the public defender or other counsel as the case may require. 705 ILCS 405/1-5(1) (West 2008).

¶ 90 "Implicit within the right to counsel is that such representation be effective." *In re Johnson*, 102 Ill. App. 3d 1005, 1011 (1981). A parent's right to the effective assistance of counsel entitles her to the "undivided loyalty" of her attorney. *In re Johnson*, 102 Ill. App. 3d at 1011. "To protect this right, counsel may not represent conflicting interests or

undertake the discharge of inconsistent duties." *In re S.G.*, 347 Ill. App. 3d 476, 479 (2004). "This concept is so central to our profession that it is embodied in our Rules of Professional Conduct. 134 Ill. 2d R. 1.9(a)." *In re S.G.*, 347 Ill. App. 3d at 479.

¶ 91 "Although there is no constitutional right to counsel in cases brought under the [Juvenile Court] Act ***, Illinois courts apply the standard utilized in criminal cases to gauge the effectiveness of counsel in juvenile proceedings." *In re S.G.*, 347 Ill. App. 3d at 479. Thus, our resolution of such an ineffective-assistance-of-counsel claim must be guided by the standards set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). Generally, to establish ineffective assistance of counsel, one must show both that counsel's representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the error, the result would have been different. *People v. Peeples*, 205 Ill. 2d 480, 511-13 (2002).

¶ 92 "Illinois courts apply a different standard to determine whether certain conflicts of interest result in the ineffective assistance of counsel." *In re S.G.*, 347 Ill. App. 3d at 479. "The supreme court has recognized that in cases where a conflict is created by defense counsel's prior or contemporaneous association with either the prosecution or the victim, the effect of counsel's conflict may be so subtle or imperceptible that the record on appeal may not reveal the extent of the influence." *In re S.G.*, 347 Ill. App. 3d at 479. "In such a case, the complainant will not be able to demonstrate that counsel acted unreasonably or that the outcome of the case would have been different absent the conflict." *In re S.G.*, 347 Ill. App. 3d at 479. "This led the supreme court to develop what has been coined the '*per se* conflict of interest' rule. *People v. Spreitzer*, 123 Ill. 2d 1, 13-23 *** (1988) (the supreme court explains and clarifies the different classes of conflicts, the *per se* rule, and related terminology)." *In re S.G.*, 347 Ill. App. 3d at 479.

¶ 93 The justification for treating conflicts as *per se* has been "that the defense counsel in each case had a tie to a person or entity–either counsel's client, employer, or own previous commitments–which would benefit from an unfavorable verdict for the defendant." *Spreitzer*, 123 Ill. 2d at 16. In such a case, the defendant is not required to show prejudice as a result of the representation; the representation is deemed ineffective as a result of the inherent conflict. *Spreitzer*, 123 Ill. 2d at 14-16. In these situations, reversal is appropriate unless the record reflects that the defendant has been made aware of the conflict and has knowingly waived his right to conflict-free counsel. *Spreitzer*, 123 Ill. 2d at 17.

¶ 94 "Treating multiple representation as creating a *per se* conflict would put an end to multiple representation altogether, since a 'possible conflict inheres in almost every instance of multiple representation,' and a *per se* rule would 'preclude multiple representation even in cases where "[a] common defense *** gives strength against a common attack." ' " *Spreitzer*, 123 Ill. 2d at 17 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980) (quoting *Glasser v. United States*, 315 U.S. 60, 92 (1942) (Frankfurter, J., dissenting))). In cases involving actual conflicts of interest that are not *per se* disabling, the conflict must be timely brought to the trial court's attention or on appeal, actual prejudice must be shown. *People v. Sanders*, 294 Ill. App. 3d 734, 736 (1998). To demonstrate that there was prejudice at trial, the respondent must demonstrate that special circumstances engendering an actual conflict adversely affected her right to a fair hearing. *Sanders*, 294 Ill. App. 3d at 737.

¶ 95 In the present case, we reject Penny's assertion that because Lawrence had been accused of abusing M.B.H. and she had not been accused of abuse, the attorney had a *per se* or an actual conflict of interest. Before the adjudicatory hearing, attorney Potter stated that there was no conflict of interest, although there was potential for one in the future. See *People v. Munson*, 265 Ill. App. 3d 765, 770 (1994) (courts must rely on defense attorneys to advise them about the existence and nature of potential conflicts of interest). At the

adjudicatory hearing, both Penny and Lawrence sought to avoid a finding of abuse or neglect and asserted that M.B.H. was not abused in their home. Penny testified that M.B.H. possibly fell from bed or was injured at the babysitter's. Their defenses were consistent and not in conflict. See *People v. Mahaffey*, 165 Ill. 2d 445, 457 (1995) (court will not overturn a conviction based on hypothetical conflicts).

¶ 96 At the hearing on December 21, 2009, attorney Potter explained that while no conflict existed before the adjudicatory hearing, he believed there to be one at that time and requested to be relieved from representing Lawrence. However, even after the circuit court appointed separate counsel, Penny continued to assert that Lawrence had not injured M.B.H., and their defenses remained consistent. Thus, there was no *per se* or actual conflict of interest.

¶ 97 Further, if there had been a *per se* conflict of interest, the parties waived it. On October 5, 2009, both Penny and Lawrence agreed to the dual representation by attorney Potter, knowingly and intelligently waiving any conflict of interest. See *People v. Johnson*, 322 Ill. App. 3d 117, 123 (2001). Thus, we reject Penny's assertion that she was denied her right to the effective assistance of counsel.

¶ 98 Penny also argues that she was denied her right to the effective assistance of counsel because the circuit court failed to appoint her another attorney at the motion to rehear and dispositional hearings held on December 22, 2010. Penny acknowledges that she was appointed additional counsel on January 3, 2011.

¶ 99 "Neither the statute nor judicial precedents specify how many times a trial court must appoint counsel in the event that counsel withdraws or an indigent parent no longer desires their particular services." *In re Travarius O.*, 343 Ill. App. 3d 844, 851 (2003). In Illinois, we analyze the potential deprivation of a parent's due process rights in termination and adoption proceedings by balancing the factors enunciated by the Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *In re Travarius O.*, 343 Ill. App. 3d at 851. The

Mathews factors are: (1) the private interests affected by the State's action; (2) the risk of an erroneous deprivation of the parent's interest through the procedures used and the probable value of additional safeguards; and (3) the State's interest, including the function involved and the fiscal and administrative burdens that the additional safeguards would entail. *Mathews*, 424 U.S. at 335.

¶ 100 In the present case, the circuit court refused to appoint a fifth attorney to represent Penny at the motion to rehear and dispositional hearings. Although Penny's interest in the custody, care, and control of M.B.H. is a fundamental one, the circuit court through its repeated appointments of counsel made every possible effort to protect her right to counsel. See *In re Travarius O.*, 343 Ill. App. 3d at 851. Penny offers no other additional safeguards that the circuit court could have provided other than again appointing new counsel, and given Penny's failure to cooperate with her four previous attorneys, we see little value in repeating the measure on a fifth occasion. See *In re Travarius O.*, 343 Ill. App. 3d at 852 ("given respondent's failure to cooperate with three separate attorneys, we see no value in repeating the measure on a fourth occasion"). The State's interest in M.B.H.'s welfare is obvious, and Penny's repeated requests for new counsel prolonged the proceedings and increased costs. See *In re Travarius O.*, 343 Ill. App. 3d at 852. Appointing Penny new counsel for a fifth time would have prolonged the case even further and would have been an additional drain on the treasury to reimburse a fifth lawyer. See *In re Travarius O.*, 343 Ill. App. 3d at 852. We find that the circuit court did not abuse its discretion in failing to appoint Penny a fifth counsel prior to the motion to rehear and dispositional hearings. The constitutional right to be represented by counsel may not be employed as a weapon to indefinitely thwart the administration of justice. See *People v. Clay*, 167 Ill. App. 3d 628, 631 (1988).

¶ 101 Penny argues that the circuit court improperly denied her motion to rehear. Penny

argues that newly discovered evidence confirmed that Anthony had been abusive to other children.

¶ 102 At no time after the adjudicatory hearing did Penny produce or describe any newly discovered evidence to show that Anthony injured M.B.H.'s face. Penny testified at the adjudicatory hearing that she suspected Anthony had inflicted the injury, and she supported her theory with testimony that M.B.H. had been in Anthony's home during the prior week. Penny subsequently offered a transcript of an interview with M.B.H. in Michigan, wherein M.B.H. said that Anthony had touched her "private." However, in the interview, M.B.H. indicated that Lawrence "punched her" in the head. Because Penny failed to produce newly discovered evidence that would probably have changed the result of the hearing (*People v. Rokita*, 316 Ill. App. 3d 292, 301 (2000)), the circuit court acted within its discretion in denying her motion to rehear.

¶ 103 Penny lastly argues in appeal number 5-11-0031 that the circuit court's order finding that she left M.B.H. with Lawrence and thus neglected M.B.H. was against the manifest weight of the evidence and that the circuit court failed to properly consider M.B.H.'s best interests.

¶ 104 At the adjudicatory hearing, the court must determine whether the child is abused, neglected, or dependent. *In re Arthur H.*, 212 Ill. 2d at 467; 705 ILCS 405/2-21 (West 2008). At the dispositional hearing, the court must determine whether "it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, 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 2008); *In re Arthur H.*, 212 Ill. 2d at 464. The court's consideration of the need for guardianship and whether a parent is dispositionally unfit must be preceded by the court's finding that it is in the best interests of the minor to become a ward of the court. 705 ILCS 405/2-23(1),

2-27(1)(a) (West 2008).

¶ 105 The State presented evidence, supported by photographs, showing that M.B.H. had suffered bruising on the left side of her face. The evidence demonstrated that M.B.H. had stated that Lawrence had inflicted the injury. The evidence supported a finding that M.B.H. was abused (705 ILCS 405/2-3(2)(i) (West 2008)) and neglected in that she was a minor whose environment was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2008)).

¶ 106 The evidence also supported the finding that M.B.H.'s best interests would be served by making her a ward of the court and awarding guardianship to DCFS. The evidence revealed that M.B.H. had been physically abused by Lawrence and that Lawrence and Penny resided together. See *In re S.S.*, 313 Ill. App. 3d 121, 129 (2000) (an important factor in wardship decision is whether both parents lived in the home where the minor was neglected). The evidence at the hearing further revealed that Lawrence and Penny had refused to cooperate with the DCFS service plan and that Penny had not visited M.B.H. subsequent to April 2010. See *In re John C.M.*, 382 Ill. App. 3d at 571 (because respondent made little progress in counseling and had still not offered any reasonable explanation as to how the minor received extensive head injuries while in her custody, the trial court could reasonably conclude respondent failed to incorporate the teachings of her service plan into her life and was unfit). Under the circumstances, we hold that the court's order granting DCFS guardianship was proper.

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¶ 108 With regard to the termination of her parental rights, Penny argues that the circuit court's determination that she was unfit was against the manifest weight of the evidence.

¶ 109 The Juvenile Court Act of 1987, as amended, provides a two-stage process whereby parental rights may be involuntarily terminated. 705 ILCS 405/2-29 (West 2008). Under this bifurcated procedure, the State must make a threshold showing of parental unfitness

based upon clear and convincing evidence and, thereafter, a showing in a separate hearing that it is in the child's best interests to sever the parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990).

¶ 110 We accord the trial court's finding of parental unfitness great deference because it is in the best position to make factual findings and credibility assessments. *In re D.L.*, 326 Ill. App. 3d 262, 269 (2001). We will reverse the trial court's decision regarding parental fitness only if it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *In re D.D.*, 196 Ill. 2d at 417.

¶ 111 The grounds that will support a finding of unfitness are set out in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2008). Although section 1(D) sets out various grounds under which a parent may be deemed unfit, an unfitness finding may be entered if there is sufficient evidence to satisfy any one statutory ground. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). Section 1(D)(m)(ii) of the Adoption Act provides that a parent may be found unfit for her:

> "[f]ailure *** to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1(D)(m)(ii) (West 2008).

¶ 112 "If a service plan has been established *** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of [the Adoption] Act, 'failure to make reasonable progress toward the return of the child to the parent' includes *** the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care within 9 months after the adjudication." 750 ILCS 50/1(D)(m)(I) (West 2008). "Reasonable

progress" is an objective standard which is met when the court, based on the evidence before it, can conclude that the parent's progress in complying with the directives given to her for the return of the child is sufficiently demonstrable and of such a quality that the court will be able to order the child returned to parental custody in the near future. *In re J.G.*, 298 Ill. App. 3d 617, 626 (1998); *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). The court is able to order the child returned to parental custody in the near future because, at that point, the parent will have fully complied with the directives previously given to her to regain the custody of the child. *In re L.L.S.*, 218 Ill. App. 3d at 461. "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000).

¶ 113 "[T]he standard by which progress is to be measured is parental compliance with the court's directives, the service plan, or both." *In re L.L.S.*, 218 Ill. App. 3d at 463-64. "[A] court is duty bound to ensure that serious parental deficiencies of whatever nature have been corrected before the court permits one of its wards to be returned to that parent's custody." *In re L.L.S.*, 218 Ill. App. 3d at 464. The respondent's progress is assessed and measured in nine-month periods following the trial court's adjudication order. *In re R.L.*, 352 Ill. App. 3d 985, 997 (2004). "A trial court does not have to wait forever for a parent to make reasonable efforts or progress toward regaining the custody of his or her children." *In re C.C.*, 299 Ill. App. 3d 827, 830 (1998).

¶ 114 "The Adoption Act specifies that insofar as a DCFS service plan is designed to correct the conditions that led to removal of a child, the parent's failure to substantially fulfill obligations under the service plan can show a failure to make reasonable progress to return of the child." *In re F.S.*, 322 Ill. App. 3d 486, 492 (2001); 750 ILCS 50/1(D)(m) (West 2008). "But in assessing substantial fulfillment of the parent's obligations, the court must 'recogniz[e] that compliance with DCFS service plans is a means to a desired end, not the

end in itself ***. A parent might succeed at reaching a goal envisioned by DCFS without following DCFS' specific directives.' " *In re F.S.*, 322 Ill. App. 3d at 492 (quoting *In re S.J.*, 233 Ill. App. 3d 88, 120 (1992) (where parent found better therapy for drug dependence in a program DCFS did not recommend, court found reasonable progress and avoided irrationally elevated administrative means over statutory ends)). In some instances, requiring specific compliance with the service plan may contravene the explicit statutory purpose of preserving and strengthening family ties whenever possible. *In re F.S.*, 322 Ill. App. 3d at 492. Thus, while failure to comply with a DCFS service plan remains relevant, such failure alone cannot overcome evidence of reasonable progress toward correction of the conditions that led to the removal of the child. *In re F.S.*, 322 Ill. App. 3d at 492; *In re S.J.*, 233 Ill. App. 3d at 121; see also *In re A.J.*, 296 Ill. App. 3d 903, 916 (1998) (where the State presented no evidence that a parent had drug problems affecting the ability to raise children, the parent's failure to attend drug counseling was not grounds for terminating parental rights, although the service plan required drug counseling).

¶ 115 In the present case, the circuit court adjudicated M.B.H. abused and neglected on November 23, 2009, so the relevant nine-month period following adjudication ended on August 23, 2010. During this initial nine-month period following adjudication, and throughout the proceedings, Penny refused to discuss the service plans with DCFS agents, refused to notify DCFS agents where she was living, and refused to allow DCFS agents in her home.

¶ 116 The client service plans, dated November 23, 2009, March 22, 2010, and September 15, 2010, required Penny to maintain contact with her counselor, complete a psychological evaluation, keep current a signed release of information, participate in a parenting class, and attend counseling. Yet, Penny failed to fulfill the requirements of the service plans. She did not keep appointments with her caseworker, did not complete a psychological evaluation,

did not sign a release for medical information, and did not attend counseling, family therapy, or parenting classes.

¶ 117 The evidence at the unfitness hearing demonstrated that Penny had completely and deliberately refused to cooperate with any of the service plans in effect after the adjudication of abuse and neglect. Although compliance with the DCFS service plan is only a means to a desired end, not the end in itself, Penny failed to reach the goals envisioned by DCFS. Penny failed to provide a sufficient, alternative psychological evaluation or an alternative home study evaluating her Dupo home. Penny failed to provide an alternative means to demonstrate that she could provide a safe environment to which the circuit court could return M.B.H. Instead, the evidence supported the circuit court's conclusions that Penny was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2008)).

¶ 118 Penny also argues that the circuit court's finding that it was in M.B.H.'s best interests to terminate her parental rights was against the manifest weight of the evidence. We agree.

¶ 119 The goals of a proceeding to terminate parental rights are: (1) to determine whether the natural parent is unfit, and if so (2) to determine whether adoption will best serve the child's needs. *In re M.M.*, 156 Ill. 2d 53, 61 (1993). Once parental unfitness has been established, the parent's rights must yield to the child's best interests. See 705 ILCS 405/2-29(2) (West 2008); *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The court focuses upon the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere. *In re Adoption of Syck*, 138 Ill. 2d at 276. A separate hearing and determination of the child's best interests is mandatory to ensure that the court properly focuses on those interests. *In re D.R.*, 307 Ill. App. 3d 478, 484 (1999). To determine the child's best interests, the circuit court is required to consider, in the context of the child's age and developmental needs, the following:

"(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 2008).

¶ 120 "Because the best interest determination focuses on what is in the *child's* best interest, the child's likelihood of adoption is an appropriate factor for the trial court's consideration." (Emphasis in original.) *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). "Evidence of a bond or lack thereof between parent and child is relevant to the trial court's best-interest determination." *In re M.R.*, 393 Ill. App. 3d 609, 615 (2009). Other important

considerations include the nature and length of the child's relationship with the present caretakers and the effect that a change of placement would have upon the child's emotional and psychological well-being. *In re Austin W.*, 214 Ill. 2d 31, 50 (2005). "[T]he trial court need not articulate any specific rationale for its decision, and a reviewing court may affirm the trial court's decision without relying on any basis used by the trial court." *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004).

¶ 121 The State must prove, by a preponderance of the evidence, that termination of parental rights is in the child's best interests. *In re D.W.*, 214 Ill. 2d 289, 315 (2005). A circuit court's finding that termination is in the child's best interests will not be reversed unless it is contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495 (2002).

¶ 122 The evidence revealed that Penny had provided food, shelter, healthcare, and clothing for M.B.H. but that while in Penny's home, M.B.H. suffered a bruise that she said Lawrence inflicted. The evidence revealed that M.B.H.'s identity and family ties were dependent on her connection to Penny, her only remaining, interested relative. Dr. Schaafsma's bonding assessment revealed that Penny and M.B.H. were well-bonded, that they loved each other, and that M.B.H. wanted to return home to Penny. The evidence revealed no other persons available to care for M.B.H. long-term.

¶ 123 Until Penny complies with the goals of the DCFS service plan and demonstrates that she can care for M.B.H. without endangering her health or safety, M.B.H.'s need for permanence will not be met. On the other hand, M.B.H. has not enjoyed a stable lifestyle since leaving Penny's home, and the State failed to present evidence showing that the potential adoptive placement mentioned at the hearing was appropriate or likely. Based on the evidence presented, we find that the circuit court's determination, that M.B.H.'s best interests were served by terminating Penny's parental rights, was against the manifest weight

of the evidence.

¶ 124 We note that the Juvenile Court Act "contemplates the filing of more than one petition to terminate parental rights." *In re A.H.*, 207 Ill. 2d 590, 594 (2003) (despite previous order denying petition to terminate parental rights, the possibility exists that parental rights could be terminated in the future). Successive termination proceedings are permissive, and there is no requirement that parental fitness must be redetermined once a parent has been found unfit and where a successive petition or motion to terminate has been filed. *In re M.R.*, 393 Ill. App. 3d at 616.

¶ 125 In the present case, the circuit court found that Penny was unfit, and as discussed, that finding was not against the manifest weight of the evidence. Also, that finding is not altered by this court's decision that termination was not in M.B.H.'s best interests. See *In re M.R.*, 393 Ill. App. 3d at 616. Thus, we make no determination regarding a best interests hearing that may occur in the future. We hold only that the evidence presented at the July 20, 2011, best interests hearing in this case did not sufficiently support a finding that M.B.H.'s best interests were served by terminating Penny's parental rights. Accordingly, we strongly admonish Penny to comply with the DCFS service plan goals, her lack of trust notwithstanding, or she will most likely face future termination of her parental rights.

¶ 126 Penny lastly argues that the circuit court erred and abused its discretion when it denied Penny's request for an *in camera* interview of M.B.H. at the best interests stage of the termination proceeding.

¶ 127 "The decision of whether to conduct an *in camera* interview is a matter for the trial court's discretion." *In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 733 (2006). "When a trial court finds good reason not to conduct an *in camera* interview, a reviewing court will not substitute its judgment." *In re Marriage of Wanstreet*, 364 Ill. App. 3d at 733.

¶ 128 In the present case, M.B.H.'s wishes and feelings toward Penny were presented during

the best interests hearing. She loved Penny and wanted to return home to her. Penny has failed to indicate what M.B.H.'s testimony would have added to her position. As such, the trial court did not abuse its discretion in excluding M.B.H.'s testimony, especially in light of the decision being made in the context of a best interests hearing. See *In re A.W., Jr.*, 397 Ill. App. 3d 868, 874 (2010) ("We can only imagine the stress and pressure placed on children that are requested to testify in this setting, the impact of which will undoubtedly affect them long-term. We simply cannot know the detrimental effects caused by placing a child in such a situation.").

¶ 129 CONCLUSION

¶ 130 For the foregoing reasons, we affirm the order of the circuit court of Fayette County declaring M.B.H. to be a neglected minor, making her a ward of the court, and awarding guardianship to DCFS. We reverse the circuit court's order terminating Penny's parental rights.

¶ 131 Affirmed in part and reversed in part.