2017 IL App (2d) 161076-U
No. 2-16-1076
Order filed May 3, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TANNER K., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JA-193
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Eric K., Respondent-Appellant).	)	Francis Martinez,
	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Respondent forfeited argument that he was denied due process by trial court's failure to re-appoint a guardian *ad litem* to act on his behalf; (2) respondent was not denied due process by the trial court's failure to hold a competency hearing; (3) trial court did not fail to exercise its discretion in not re-appointing a guardian *ad litem* for respondent or to conduct a hearing as to respondent's competence; and (4) respondent was not denied the effective assistance of counsel by his attorneys' failure to move for the appointment of a guardian *ad litem* or a competency hearing.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Eric K., is the father to Tanner K. (born October 9, 2005). On October 6, 2016, the circuit court of Winnebago County found respondent to be an unfit parent with respect to the minor. Subsequently, the court concluded that the termination of respondent's parental

rights was in the minor's best interest.[1] On appeal, respondent does not challenge the grounds identified by the trial court for finding him unfit or the court's conclusion that it is in the minor's best interest that respondent's parental rights be terminated. Rather, respondent contends that he was denied due process by the court's failure to appoint a guardian *ad litem* (GAL) for him or to hold a competency hearing "despite overwhelming evidence that he might be mentally incompetent." Respondent contends that even if due process did not require the trial court to appoint a GAL or hold a competency hearing, the trial court had the authority to take such action and it abused its discretion by failing to exercise that authority. Alternatively, respondent argues that he received ineffective assistance of counsel because none of his appointed attorneys moved for the appointment of a GAL or for a competency hearing. We are not persuaded by any of respondent's claims. Accordingly, we affirm the judgment of the circuit court.

¶ 4 II. BACKGROUND

¶ 5 Late in April 2014, the Illinois Department of Children and Family Services (DCFS) received a report concerning respondent and the minor. Among other things, the report indicated that respondent had been waking up the minor in the middle of the night with a nail gun and telling him that people were trying to break into their home. The minor reported that respondent was hearing voices and seeing shadows in the basement. The police visited the home for several welfare checks. During one of those visits, respondent stated that he saw a little girl on his porch, but when he went to talk to the girl, she disappeared. Respondent also told the police that the demons in his home do not allow him to sleep. Respondent felt that he needed to be taken for a mental evaluation.

[1] The minor's biological mother is deceased.

¶ 6 On May 15, 2014, the State filed a three-count neglect petition. Count I of the neglect petition alleged that the minor was neglected in that he was subjected to an injurious environment, thereby placing him at risk of harm, in that the minor had access to harmful material, including prescription medications. 705 ILCS 405/2-3(1)(b) (West 2014). Count II alleged that the minor was neglected in that he was not receiving the proper support, education, or other care necessary for his well-being in that respondent prevented the minor from receiving the minor's prescribed medication, causing the minor to exhibit abnormal behavior. 705 ILCS 405/2-3(1)(a) (West 2014). Count III alleged that the minor is a dependent minor and was without proper care because of the physical or mental disability of his parent, in that his mother is deceased and respondent has mental health problems which prevent him from properly parenting. 705 ILCS 405/2-4(1)(b) (West 2014).

¶ 7 The matter proceeded to a shelter-care hearing on May 16, 2014. At that time, the court appointed attorney Ashley Marshall to represent respondent. Respondent received notice of the hearing, but was not present. At the conclusion of the hearing, the court found probable cause to believe that the minor was neglected and that there was an urgent and immediate necessity that the minor be placed in shelter care. The court granted temporary guardianship and custody of the minor to DCFS with discretion to place the minor. The minor was originally placed with the paternal grandmother, but was later transferred to a traditional foster home. Subsequently, a service plan was developed. Among the tasks required of respondent in the service plan were to complete a psychological evaluation, follow any resulting service recommendations, sign all necessary consents for release of medical information, maintain psychiatric monitoring, attend individual psychotherapy, remain clean and sober, complete random drug drops, and maintain stable housing and income.

¶ 8 On June 27, 2014, attorney David Vella entered an appearance on behalf of respondent. On July 8, 2014, the court vacated the appointment of attorney Marshall and adjudicated respondent the biological father of the minor pursuant to DNA testing. Also on July 8, 2014, Children's Home + Aid, a contracting agency of DCFS, filed a parent-child visitation plan with the court. In a report dated August 19, 2014, caseworker Rachel León noted that respondent had yet to undergo a psychological evaluation because he had not yet signed all the necessary releases. León also recounted a phone call she received from respondent on August 8, 2014. During the call, respondent told León that his grandfather had signed the Declaration of Independence and that this country had betrayed him. Respondent also informed León that if she felt that the minor was better off with foster parents, he would sign the necessary paperwork at the next court date. He added, however, that he would also spend the rest of his life making sure people knew that he had been mistreated by DCFS. Respondent then hung up on León, but called back shortly later, yelling profanities. Respondent made a similar phone call to the foster parent. León reported that between August 10 and August 13, 2014, respondent made 14 calls to her, some of which were threatening in nature. On August 13, 2014, respondent was arrested for criminal damage to property.

¶ 9 In a report dated October 14, 2014, León noted that respondent's visits with the minor were suspended pending a family meeting to discuss respondent's mental health after he left her threatening voicemails. Respondent cancelled the family meeting due to his mother's illness. León also noted in her report that on September 9, 2014, respondent was arrested for possession of a controlled substance, driving under the influence, and driving on a revoked license. Following his arrest, respondent was placed in the Winnebago County jail.

¶ 10 The adjudicatory hearing on the neglect petition was held on October 21, 2014. At that hearing, the court asked Vella whether he needed to talk to respondent. Vella responded that he and respondent had already spoken. The court then briefly recessed to allow the parties to confer. When the parties reconvened, the State announced that respondent had agreed to stipulate to count III of the neglect petition.[2] In return, the State agreed to dismiss counts I and II of the petition with the understanding that services would be required for all counts. The court asked Vella whether his client agreed. Vella responded in the affirmative. Respondent then asked the court to speak. Vella directed respondent to remain quiet and conferred with him off the record. The proceedings then concluded, with both Vella and respondent thanking the court.

¶ 11 On November 26, 2014, respondent filed *pro se* a "Motion to Vacate Admission." In the motion, respondent asserted that his stipulation to count III of the neglect petition was not knowingly made in that he did not understand the consequences of said action. Respondent also claimed that he had a "meritorious defense." That same day, Vella filed a motion to withdraw as counsel on the basis that respondent did not have the financial means to pay him. At a hearing on December 10, 2014, respondent told the court he had no objection to Vella's withdrawal and that he wanted to represent himself. The trial court granted Vella's motion to withdraw and then

[2] According to a subsequent filing by the State, the language of count III was amended on the record, at the request of attorney Vella, to read that the minor is a dependent minor and was without proper care because of the physical or mental disability of his parent in that his mother is deceased and respondent "has *financial and* mental health problems which prevent him from properly parenting." (Emphasis added.) 705 ILCS 405/2-4(1)(b) (West 2014). Although the stipulation read into the record does contain the added language italicized above, our review of the transcript of the hearing does not indicate at whose request the amendment was made.

questioned respondent regarding his level of education and his ability to read and write. Respondent told the court that he did not graduate high school, but "went through *** ninth grade." He stated that he speaks English, he is able to read, and that he understands the proceedings. The court informed respondent that even though he is not trained in the law, he would be held to the same standard as an attorney. Respondent was incarcerated at the time, and the court pointed out that respondent's status as a prisoner did not entitle him to any special accommodations. The court later removed respondent from the courtroom when he refused to heed the court's admonishment to remain quiet. The court then appointed attorney Nicholas Meyer as standby counsel for respondent.

¶ 12 On January 22, 2015, the court held a hearing on respondent's *pro se* motion to vacate admission. At the hearing, respondent requested the appointment of counsel. The court appointed Meyer to represent respondent. The court denied respondent's *pro se* motion, finding that it did not state a legal basis to vacate his admission, but granted Meyer leave to file a motion to vacate on respondent's behalf.

¶ 13 On February 9, 2015, respondent filed two *pro se* motions, a motion to dismiss the neglect petition and a motion to withdraw his stipulation to count III of the neglect petition. Additionally, on February 20, 23, and 25, 2015, respondent filed several hand-written documents directed to the trial court. On March 31, 2015, Meyer filed a motion to vacate admission on respondent's behalf. In the motion, Meyer argued that the admission was not entered into knowingly and voluntarily. According to Meyer, attorney Vella entered into the stipulation without consulting respondent or obtaining his consent. Meyer further argued that Vella did not explain the consequences of the admission to respondent and the trial court did not address respondent to determine whether he agreed to enter an admission to count III or whether he

understood the consequences of his actions. Meyer also suggested that respondent was found unfit to stand trial in his criminal case. Meyer argued that because respondent was unfit to stand trial in his criminal case, he could not have knowingly and voluntarily admitted to the allegations in count III of the neglect petition.

¶ 14 At the hearing on Meyer's motion, the court noted that it had received information from Meyer that respondent had been found unfit to stand trial. Upon further discussion, the court noted that there was no confirmation that respondent was found unfit, but it was Meyer's belief, based on his review of the record in the criminal case, that he had been found unfit. The court stated that "[g]iven the implications of that finding, it may be proper to appoint a guardian *ad litem*" for respondent. Neither the State nor the minor's GAL objected. The court then asked Meyer his opinion. The following colloquy occurred:

> "MR. MEYER: Judge, I haven't talked to [respondent] about that. This is obviously a situation I have not dealt with, so I'm not sure what, if any, position I can take as his attorney in fact, that I can agree to something, especially if he would be objecting to it.
>
> THE COURT: Well, this is—he's been found unfit. I'm not necessarily certain I have to adhere in [*sic*] his objection. I need to do what is in his best interest."

The minor's GAL then suggested that the court obtain a copy of the fitness evaluation ordered by the criminal court, and the State agreed. The court stated that the "limited question" before it was "the appropriateness of a guardian *ad litem* for [respondent] given the finding that [the parties] believe has been entered." The court then appointed Brad Tengler as respondent's GAL. The court stated that "if it turns out that [respondent] is fit to stand trial," it would vacate Tengler's appointment at a later date. The court then held a brief permanency-review hearing at

which it found that DCFS had made reasonable efforts and that placement of the minor is necessary and appropriate. The court set the permanency goal as return home within one year.

¶ 15 Meanwhile, on April 24, 2015, while Meyer's motion was still pending, respondent filed a *pro se* document entitled "Motion to Dismiss." The motion included numerous allegations against attorney Meyer and the trial court. At a hearing on May 4, 2015, respondent appeared before the court represented by Meyer as counsel and Tengler as his GAL. On that date, respondent was removed from the courtroom after he failed to heed the court's request to remain quiet. The court then clarified that although respondent underwent a fitness evaluation in his criminal case, there had yet to be a judicial finding of unfitness. The court asked the parties to submit case law and continued the matter to June 8, 2015.

¶ 16 On May 20, 2015, the State filed a response to Meyer's motion to vacate respondent's admission. In its response, the State asserted that respondent's motion should be denied as the stipulation to count III of the neglect petition was entered into by respondent knowingly and voluntarily. In support of its position, the State contended that: (1) respondent was properly advised of his rights and the nature of the proceedings; (2) attorney Vella stated on the record that he had spoken with respondent prior to the proceedings and that respondent was in agreement with the stipulation; (3) respondent did not dispute Vella's statement; and (4) the fact that the parties agreed to amend the language of count III demonstrated that Vella was acting on respondent's behalf. Citing to *People v. Weeks*, 393 Ill. 2d 1004, 1010 (2009), the State also argued that the question of one's fitness may be "fluid." Thus, the State asserted, the fact that the judge in the criminal case found a *bona fide* doubt as to respondent's fitness in December 2014 and the doctor who conducted the fitness evaluation found respondent unfit to stand trial in March 2015 does not constitute evidence that there was any doubt as to respondent's ability to

knowingly and voluntarily enter into a stipulation in October 2014. The State also pointed out that respondent disputed the finding of unfitness in his criminal case.

¶ 17 At the hearing on June 8, Meyer, Tengler, and respondent were all present. At the beginning of the hearing, respondent asked the court if he could "have a minute" to speak with Tengler. After reconvening, Meyer informed the court that respondent wanted to withdraw the motion to vacate admission. Meyer expressed reservations regarding respondent's request given the allegation of unfitness. At that point, the court noted that the fitness evaluation in respondent's criminal case had not been made of record in the case involving the minor. The court further noted that there had yet to be a judicial finding of unfitness in the criminal case. Thus, all the court had before it was "a rumor of a fitness report." The court also noted that Vella, the witness who would testify for the State in opposition to respondent's motion, was not present. The court then remarked:

> "So I really don't have a basis to presume that [respondent's] unfit at all. So the basis of the motion may [*sic*] continue as relevant with Mr. Vella unless—unless the parties want to go forward at some point with a fitness hearing here. But I don't think that's necessary.
>
> Mr. Tengler, I want to thank you for your service; but based on my new thinking, I don't think—I think I may have jumped the gun in appointing a guardian *ad litem*, based on my reasoning, and my inclination is to vacate your appointment unless, until and if [respondent] is found unfit."

The court then asked the parties if they had any comments on its reasoning. Meyer asked what would happen "if there's a finding of unfitness down the road." The court responded:

> "That may impact matters now, but we don't have that control and that would be us speculating as to what might happen down the road. I mean, technically—I mean, theoretically [respondent] may resolve his matter out there without ever getting to a finding. All I know is—and I don't know when—all I know is my understanding is that there is a jury demand for the fitness hearing that Judge Maher is gonna preside over at some point."

The court then asked if there was any objection "to vacating for now, as prematurely made by the Court, Mr. Tengler's appointment as guardian ad litem." No one objected, and the court vacated the appointment.

¶ 18 At the end of the June 8 hearing, respondent, against the advice of his attorney, directly addressed the court as follows:

> "THE RESPONDENT FATHER: —I have prepared a statement, after spending two hours with [caseworker León], that I would like to share with the Court.
>
> I would also like to share with the Court that it's been ten weeks since Mr. Meyer spoke to me. He's only spoke [*sic*] to me once, twelve hours—on March 30th, 2013, twelve hours before court. He has never spoke [*sic*] to me again. Even the last court date he did not see me before court.
>
> THE COURT: Well, I do know that—
>
> THE RESPONDENT FATHER: That's not proper representation. Article Eight, Illinois Supreme Court Rules of Professional Conduct, he is not following in any way.
>
> THE COURT: Actually, let me stop you right there.
>
> THE RESPONDENT FATHER: Sir, my son has been gone for thirteen and a half months.

THE COURT: *** let me stop you right there.

THE RESPONDENT FATHER: I would like to—

* * *

THE RESPONDENT FATHER: —draw it to a conclusion today.

THE COURT: *** when I say stop, it's like a traffic control device. It's stop. It's a red light. Okay?

THE RESPONDENT FATHER: I understand. Thank you, sir.

THE COURT: Mr. Meyer has researched and filed a motion. I personally have received his legal research that he's been working diligently on your behalf and submitted to the Court at least five cases for the Court to consider.

THE RESPONDENT FATHER: Well, none of them have been gone over with me.

THE COURT: Well, they don't have to. You're not a lawyer.

THE RESPONDENT FATHER: Yes, they do.

THE COURT: Do you understand? So Mr. Meyer has researched the issues. He has filed motions on your behalf. He has researched those motions and submitted the research to the Court. So I don't find that there's any issue with his legal representation.

THE RESPONDENT FATHER: That's fine.

THE COURT: So we're gonna stop there.

THE RESPONDENT FATHER: I still want to—

THE COURT: You're done now.

THE RESPONDENT FATHER: I want this concluded. I'm throwing in the towel.

THE COURT: All right.

THE RESPONDENT FATHER: I want to do whatever [caseworker León] and DCFS want me to do to return to my child.

THE COURT: Okay. You can remove [respondent] now. He's done. Thank you, sir.

THE RESPONDENT FATHER: I withdraw my vacation. I disagree with what they did on the 21st.

THE COURT: All right.

THE RESPONDENT FATHER: I want to return to my son. I have a packet for summer school for [the minor].

(Respondent Father removed from courtroom.)

THE COURT: All right. The record will show that *** [respondent] does not like to be told to remain silent, so he has been removed from the courtroom as a disruption."

The matter was then continued to July 1 for further proceedings.

¶ 19 On June 18, 2015, respondent filed a *pro se* motion to withdraw his motion to vacate admission. At the July 1, 2015, hearing, attorney Meyer stated that he had a lengthy conversation with respondent prior to court and was also asking to withdraw the motion to vacate admission. Further, Meyer stipulated to the entry of dispositional orders without a hearing. Meyer stated that the reason for reversing course was so that respondent could begin services, including treatment for Attention Deficit Hyperactivity Disorder (ADHD) and Post-Traumatic Stress Disorder. In accordance with the stipulation, the court entered a finding that respondent is either unfit, unable, or unwilling to properly parent or care for the minor. The court granted guardianship and custody of the minor to DCFS with visitation at the agency's discretion. The

permanency goal was set as return home within 12 months. The court also informed respondent that the dispositional order was final and appealable.[3]

¶ 20 Meanwhile, on September 21, 2015, attorney Meyer filed a motion for leave to withdraw as counsel on the basis that he was no longer accepting appointments as trial counsel in juvenile cases and is in the process of withdrawing from cases not currently set for trial. A hearing on the motion was held on October 20, 2015. At the hearing, the court noted that respondent had filed a number of *pro se* "motions" consisting primarily of copies of letters he sent to the minor. The court was informed that respondent had been sent to the Elgin Mental Health Center, but had recently been returned to the Winnebago County jail. Respondent told the court he had no objection to Meyer's withdrawal, and the court granted the motion. The court then appointed attorney John Palmer to represent respondent.

¶ 21 A permanency-review hearing report dated November 24, 2015, authored by caseworker Emily Montana, was filed with the court on December 8, 2015. In the report, Montana stated that respondent has "very significant mental health issues, which have not yet been addressed." Montana also noted that respondent "appears to have issues with substance abuse," he has a lengthy history with DCFS, and he has not made significant progress since the case opening. As

[3] On July 31, 2015, respondent filed a notice of appeal from the orders of adjudication and disposition. The court appointed attorney Tina Long Rippy as counsel on appeal. Rippy filed a motion with this court seeking leave to withdraw as counsel on the basis that there were no issues of arguable merit for appeal. See *Anders v. California*, 386 U.S. 738 (1967); *In re Alexa J.*, 345 Ill. App. 3d 985 (2003). This court agreed with Rippy, and, on December 7, 2015, entered an order granting Rippy's motion to withdraw and affirming the judgment of the circuit court. See *In re Tanner K.*, 2015 IL App (2d) 150775-U.

a result, Montana recommended that the permanency goal be changed to substitute care pending court determination of termination of parental rights.

¶ 22 Attached to Montana's report was a service plan dated October 23, 2015, authored by caseworker León. León reported that respondent was found unfit to stand trial in his criminal case and he was sent to the Elgin Mental Health Center in August 2015. In October 2015, respondent was released and returned to the Winnebago County jail. Respondent signed consents for release of his medical records on October 20, 2015, thereby allowing DCFS to obtain his mental-health records. León noted that respondent continues to write letters to the minor on a frequent basis. León arranged a visit between respondent and the minor at the Elgin Mental Health Center, but the visit had to be canceled because the staff at the facility did not confirm the visit until shortly before it was to occur. When respondent learned that the visit had been canceled, he stated, "I can't wait to get out so I can slice this bitch's throat." A visit at the Elgin Mental Health Center did occur on September 17, 2015, and León reported that it was appropriate. A subsequent visit at the Elgin Mental Health Center was cancelled at the minor's request.

¶ 23 A permanency-review hearing was held on December 8, 2015. At the hearing, attorney Palmer stated that he attempted to review Montana's November 24, 2015, report with respondent, but respondent informed him that he was having trouble comprehending because he was not receiving his medications. Respondent then stated that he has ADHD for which he has been prescribed Ritalin. Ritalin, however, is a stimulant, so he is unable to obtain it in the Winnebago County jail. Respondent explained that without the medication, his "link and property to comprehend and understand all things that are being clarified at that particular moment and to be able to respond back without having to think about it, *** come back up hours

later," at which time he realizes that he "shouldn't have said that and that's how [he] should have responded." Respondent also told the court that his criminal case had been resolved and that he was scheduled to be released from prison in 89 days. Respondent stated that he was pleased with Montana (his new caseworker) and attorney Palmer. He continued, however, that the lack of Ritalin causes him to have anxiety and panic attacks. As a result, respondent requested a continuance until he is released from prison and could resume taking his medication. The court denied respondent's request for a continuance, noting that it was holding a statutorily-required permanency-review hearing. The court also remarked that, to its knowledge, ADHD results in "a bit of an attention deficit in concentrating," but does not impact one's understanding. The court added that the record demonstrated that respondent had "been here calmly explaining [his] position, rationally explaining [his] position and appearing, to [the court], to be perfectly capable of understanding these proceedings because [respondent is] talking to [the court] in a calm and rational manner." In response, respondent stated that he is calm because "Elgin has put me on five milligrams of Lorazepam three times a day." Respondent stated that the Lorazepam "actually makes [his] ADHD worse" and does not help him comprehend.

¶ 24 The court then proceeded to the permanency-review hearing. It explained to respondent what the permanency-review hearing entails. The court also explained that DCFS was requesting that the permanency goal be changed to substitute care pending court determination of termination of parental rights. The court noted that if the goal change is granted, the State will have the authority to petition for the termination of respondent's parental rights. The State then asked the court to find that DCFS and its contracting agencies had made reasonable efforts, but that respondent had failed to make reasonable efforts or reasonable progress during the applicable review period. The State noted that respondent is incarcerated and the only tasks that

have been asked of him during the review period was that he sign releases to obtain his medical records. The State noted that there had been delays in respondent signing those releases. As a result, the State asked the court to find that respondent had failed to make reasonable efforts. The State also opined that respondent had failed to make reasonable progress since the minor was no closer to returning home than he was at the beginning of the review period. Finally, the State requested a change in permanency goal to substitute care pending court determination of termination of parental rights. In response, Palmer argued that respondent had signed releases on October 20, 2015, but that it will take time for the releases to "bear fruit and have an impact on the services that may be recommended." Palmer also contended that the issue of reasonable progress needed to be viewed in light of respondent's mental health. Palmer asserted that respondent's mental health was "a serious concern and it had not been addressed *** in this case" and that it "impedes [respondent's] ability to cooperate *** [and] to make efforts." Palmer also advocated for maintaining the permanency goal of return home within 12 months.

¶ 25 The court then asked respondent if he wanted to say anything. In response, respondent made the following statement:

> "Your Honor, I just want to let you know that I've been here in this jail for over 15 months. The other courtroom had doctors come see me. They've never brought any doctors to see me. I've never been seen by the mental health people here in this jail in 15 months. There's never been one mental issue with me in this jail in 15 months. I'm in a regular pod.
>
> These—I didn't know if you got these from Rosecrance, the releases. Once I got the proper releases from them, I did sign. They had my releases from Rosecrance for over a year that they refused to acknowledge. It shows here the issues that start with me,

sir, are two days after my son's removed from my home on the day after my father died. Prior to that Miss Melody, the head of the records department of Rosecrance who I've known for over 20 years, says *** there's no issues with you at all through 2014 except on the 27th you started calling at 3:00 in the morning, and that was two days after your little boy was taken from you, and that's after—that's when I started receiving the Klonopin from Dr. D'Souza at Rosecrance, and we were getting engaged in getting me some help for my nervous breakdown from the loss of my little boy on the day my father died.

I don't have any issues, as you saw in my motion, to, you know, give in that I filed in, you know, whatever it was, and I have no problems with cooperating with any kind of classes or anything that would make me a better father in any way for my beloved son ***. My son has been the light of my life and my goal has always been his future.

They are asking now for releases from Elgin. I do have a copy of the releases—I—I got a copy of that. I was setting it for fit for trial. There was no mental health help there. They simply tranquilized me and then sent me back.

I can't read the doctor's scribble. And as I told [attorney Meyer], until we can get this transpired and I can read what they're saying about me, would—would—I think I would have released them to DCFS, which I don't have a problem doing, but even [attorney Meyer] agreed that until we know what they're saying, it would be foolish to release those. I'm willing to cooperate in every way.

And prior to my son's taking, sir, there has never been a mental health issue with me except for my ADHD that I have been engaged in."

Following respondent's statement, the court remarked, "it appears to me that you're quite well-spoken and it appears to me you do understand these proceedings 'cause you've just addressed them with me." The court then announced that, based on Montana's report, it was finding that DCFS made reasonable efforts toward reunification, but that respondent had not made reasonable efforts or reasonable progress. In addition, the court changed the permanency goal to substitute care pending court determination of termination of parental rights.

¶ 26 In a report dated February 17, 2016, Montana noted that respondent was incarcerated at Statesville Correctional Center in Joliet with a projected release date of March 9, 2016. Montana further noted that prior to leaving the Winnebago County jail, respondent sent her a packet of 14 letters with instructions to send the minor one letter per week. Moreover, respondent continued to send letters to the minor from Statesville. In response, Montana forwarded respondent some of the minor's school work. Montana reported that respondent did not want the minor to visit him while at prison due to the environment and the fact that he would not be there long.

¶ 27 On February 23, 2016, the State filed a motion to terminate respondent's parental rights to the minor. The motion alleged that respondent was unfit on five grounds: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from him within any nine-month period after an adjudication of neglected, abused, or dependent minor (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) failure to make reasonable progress toward the return of the minor to him within any nine-month period after an adjudication of neglected, abused, or dependent minor (750 ILCS 50/1(D)(m)(ii) (West 2014)); (4) failure to protect the minor from conditions within the environment injurious to the minor's welfare (750 ILCS 50/1(g) (West 2014)); and (5) depravity

(750 ILCS 50/1(i) (West 2014)). With respect to the grounds alleging failure to make reasonable efforts or reasonable progress, the State listed the following nine-month periods: (1) October 21, 2014, through July 21, 2015; and (2) May 21, 2015, through February 21, 2016. An arraignment hearing was held on the day the termination motion was filed.

¶ 28 On April 5, 2016, Palmer filed a motion to vacate his appointment as respondent's attorney, alleging a breakdown in the attorney-client relationship. In an undated report prepared for a court hearing on April 20, 2016, Montana noted that respondent was released from prison on March 9, 2016. Respondent contacted Montana by telephone five days later. Montana hung up on respondent because he was very hostile and made threats toward her and the agency. Montana called back respondent later in the day, and he was much calmer. After respondent made another threatening phone call to the agency on March 29, 2016, he was banned from visiting the agency until he stabilized. Montana had a 40-minute phone call with respondent on March 30, 2016, during which respondent became very emotional. Montana, concerned about respondent's emotional state, contacted the local police department to conduct a welfare check on respondent. Montana also noted that respondent indicated that he was willing to participate in a psychological evaluation. To this end, Montana sent respondent consents for his medical records on March 31, 2016. As of the time she wrote the letter, respondent had yet to sign and return the consents. Montana reported that visits between respondent and the minor went well.

¶ 29 At the hearing on April 20, 2016, the court addressed Palmer's motion to vacate his appointment. Respondent told the court that he has been represented by five attorneys in the two years since the case was initiated. According to respondent, not one of those attorneys "has spoke one word on [his] defense." As a result, respondent chose to proceed *pro se*. The court granted Palmer's motion to vacate his appointment and then questioned respondent regarding his

ability to competently represent himself. Respondent told the court that he received a GED. Although respondent had not received any training of a legal nature, he stated that he had represented himself in other proceedings. Ultimately, the court allowed respondent to proceed *pro se*, and he represented himself at both the unfitness and best-interest phases of the termination proceeding.

¶ 30 The hearing on unfitness commenced on July 21, 2016. At the hearing, Amy Kukuczka, a program manager at Children's Home + Aid, testified that she was the supervisor on respondent's case until May 2016. Kukuczka noted that from October 2014 through March 2016, respondent was incarcerated. Kukuczka further testified that respondent participated in an integrated assessment for services. As part of that process, a service plan is developed to allow parents to correct the conditions that brought the minor into care. The service plans for respondent's family were admitted into evidence over respondent's objection. As part of respondent's service plan, he was given various tasks, including signing consents for his medical records, maintaining sobriety, attending a parenting class, obtaining a psychological assessment, and engaging in individual therapy. Kukuczka stated that service plans are created by the assigned caseworker every six months. Kukuczka testified that respondent never completed a psychological assessment or attended individual therapy because he refused to sign the consents necessary to obtain his records. Kukuczka further testified that the service plan required services for the minor, including a safe and stable placement and mental-health care. Kukuczka explained that the mental-health care was because the minor was diagnosed with attention-deficit disorder, bipolarity, and behavioral issues. Kukuczka noted that respondent was not involved in transporting the minor to any services or doctors' appointments and that he did not attend any educational meetings for the minor. However, respondent did participate in visitation with the

minor. Initially, the visitation was scheduled weekly. However, when respondent became incarcerated, the minor struggled with the visits and did not want to go to the jail. Kukuczka testified that all of the visits were supervised because respondent was not mentally stable enough to have unsupervised visitation. On cross-examination by respondent, Kukuczka testified that respondent submitted to several drug drops, and all of them were negative except for the substances respondent had been prescribed.

¶ 31 Following Kukuczka's testimony, the State asked the court to take judicial notice of the neglect petition filed on May 15, 2014, the temporary custody order filed on May 16, 2014, the adjudication order entered on October 21, 2014, the dispositional order entered on July 1, 2015, and the permanency review order entered on December 8, 2015. At the State's request, and over respondent's objections, the indicated packet and records for respondent from SwedishAmerican Hospital were admitted into evidence. Also admitted into evidence over respondent's objections were seven certificates of conviction reflecting that respondent had been convicted of (1) aggravated driving after revocation (625 ILCS 5/6-303 (West 1998)), a class 4 felony, in Winnebago County case No. 99-CF-761; (2) aggravated driving after revocation (625 ILCS 5/6-303 (West 2000)), a class 4 felony, in Winnebago County case No. 01-CF-2922; (3) aggravated driving under the influence of alcohol (625 ILCS 5/11-501 (West 2000)), a class 4 felony, in Winnebago County case No. 01-CF-2922; (4) aggravated driving while license suspended or revoked (625 ILCS 5/6-303 (West 2006)), a class 4 felony, in Winnebago County case No. 06-CF-659; (5) aggravated battery (720 ILCS 5/12-4 (West 2010)), a class 2 felony, in Winnebago County case No. 10-CF-749; (6) aggravated driving under the influence of alcohol (625 ILCS 5/11-501 (West 2010)), a class 2 felony, in Winnebago County case No. 10-CF-1296; and (7)

aggravated driving under the influence of alcohol (625 ILCS 5/11-501 (West 2014)), a class 2 felony, in Winnebago County case No. 14-CF-2273. The State then rested.

¶ 32 Respondent called four witnesses on his behalf. Heather Drummer testified that she has known respondent for 15 years and was one of the minor's Sunday school teachers. Drummer described the minor as happy, and she stated that he looked up to respondent. Drummer further testified that respondent did not neglect the minor. Drummer opined that respondent was a good father and that the minor loved respondent. On cross-examination, Drummer admitted that she was not aware of any of respondent's felony convictions, some of which were committed in the minor's presence. She also acknowledged that she had last seen the minor seven years ago and that her testimony is based on her observations of the minor when he was four years old.

¶ 33 Keri Borcherts, Drummer's daughter, testified that she has known respondent for 15 years. Like Drummer, Borcherts served as one of the minor's Sunday school teachers. Borcherts noted that respondent would always bring the minor to church, and the minor would be excited to be there. Respondent and the minor wore matching outfits. Borcherts never noticed any signs of neglect while the minor was in respondent's care. On cross-examination, Borcherts testified that she last saw the minor when he was six or eight years old. She also acknowledged that she was unaware of any of respondent's felony convictions.

¶ 34 Barton Anderson works as a department supervisor at a Home Depot store. Anderson stated that he has known respondent for eight years. Anderson testified that the minor would always accompany respondent when he would come to Home Depot and that the two were always dressed alike. Anderson did not observe any signs of neglect with respect to the minor. On cross-examination, Anderson testified that between 2012 and 2014, respondent and the minor came into the store three to five times a week during the summer and school breaks. Anderson

stated that respondent admitted to some "driving altercations" occurring "way back," but he was not otherwise aware of any of respondent's convictions. Anderson testified that it had been more than two years since he last saw the minor.

¶ 35 Angela Leonard testified that she is a youth specialist at Goshen Children's Home. Leonard has known respondent and the minor since March 2012. Leonard stated that her son and the minor are best friends. Leonard testified that in the time that she has known respondent, she had never seen any drugs or alcohol allowed on respondent's property. Moreover, Leonard had never observed any signs of abuse or neglect between respondent and the minor. Leonard noted that respondent had been very involved with the kids in the neighborhood. He talked to them about religion and taught them "basic Boy Scout necessities." On cross-examination, Leonard testified that she was not aware of respondent's seven felony convictions. She also stated that she has not had any contact with the minor since he was removed from the home in 2014.

¶ 36 Respondent then testified on his own behalf. Respondent initially addressed the issue of his felony convictions. He claimed that there is no charge of aggravated driving after revocation in Illinois. He also noted that some of the convictions predated the birth of his son. With respect to the aggravated battery conviction, respondent indicated that he was "not sure what that case is about" and claimed that he had a "spotless record after [his] son was born." Respondent testified that he had been very involved in his son's life when the minor was residing with him. Respondent took him to the YMCA, boys' club, and church. Respondent stated that three days after his son was taken by DCFS, he had an "emotional breakdown."

¶ 37 Following closing arguments, the court continued the matter to October 6, 2016, for a decision and possible best-interest hearing. Respondent did not appear at the October 6 hearing

because he was in the Winnebago County jail on a parole hold. The court determined that respondent had waived his presence and announced its decision. The court then found respondent unfit on all five grounds set forth in the termination motion. The court continued the matter to November 4, 2016, for a best-interest hearing.

¶ 38 Respondent was present at the best-interest hearing. At that hearing, the State called Nicole Galloway, a supervisor with Children's Home + Aid. Galloway stated that she is familiar with the minor because he is a child on a case she supervises. Galloway testified that the minor is 11 years old and resides with a foster family. The foster family consists of the parents and their two biological sons. Galloway has observed the minor with the foster parents and opined that they are bonded. She noted, for instance, that the minor looks to the foster parents for advice, guidance, and love. Furthermore, the minor relates to the foster parents' biological children as his siblings, and he has a relationship with the foster parents' extended family. Galloway has visited the foster parents' home and found it to be safe and appropriate for the minor. The foster parents provide basic necessities such as food, clothing, and shelter. Galloway also noted that the minor requires services because he has been diagnosed with ADHD and that the foster parents ensure that he receives the required services, including counseling, and that his medication is administered correctly.

¶ 39 Galloway further testified that the minor attends school through his foster home. He receives additional educational assistance through the IEP program at the school and has maintained decent grades. In addition, the minor attends community events and is friends with many children in the neighborhood. The foster parents are willing to take the minor to church, but he has stated that he has no interest in attending.

¶ 40 Galloway testified that relative placement was attempted, but, for various reasons, did not work out. However, the foster parents have indicated that they are willing to facilitate a relationship between the minor and his biological family. In this regard, Galloway noted that the minor has already seen relatives and his biological siblings. Galloway testified that the foster family is willing to adopt the minor and that the minor has expressed a desire to remain in his current placement. Galloway opined that it is in the best interest of the minor to terminate respondent's parental rights. Following Galloway's testimony, the State asked the court to take judicial notice of the evidence and testimony from the unfitness hearing as well as several court reports prepared by the agency.

¶ 41 Respondent then testified on his own behalf. Respondent's testimony focused on memories of time spent with his son, the charitable work they did together, and the circumstances that resulted in his son being removed from his care. Following respondent's testimony, the trial court found that it was in the minor's best interest that respondent's parental rights be terminated. Thereafter, respondent initiated the present appeal.

¶ 42 III. ANALYSIS

¶ 43 On appeal, respondent contends that the trial court order terminating his parental rights should be reversed for several reasons. First, respondent contends that he was denied due process by the court's failure to appoint a GAL for him or to hold a competency hearing "despite overwhelming evidence that he might be mentally incompetent." Respondent contends that even if due process did not require the trial court to appoint a GAL or hold a competency hearing, the trial court had the authority to take such action and it abused its discretion by failing to exercise that authority. Alternatively, respondent argues that he received ineffective assistance of counsel

because none of his appointed attorneys moved for the appointment of a GAL or for a competency hearing. We address each contention in turn.

¶ 44 A. Due Process

¶ 45 Initially, respondent contends that the order terminating his parental rights should be reversed because his right to due process was violated by the trial court's failure to appoint a GAL on his behalf or to conduct a competency hearing. Respondent notes that in the criminal context, the failure to hold a hearing where there is a *bona fide* doubt as to the competency of a criminal defendant results in a violation of due process. See *United States v. Franzen*, 692 F.2d 491 (7th Cir. 1982); U.S. Const., amend. XIV. Respondent suggests that the due process protections applicable in the criminal arena should be extended to a proceeding to terminate an individual's parental rights. According to respondent, the record in this case is replete with evidence that he suffered from serious mental-health issues. Thus, respondent reasons, due process required the appointment of a GAL or a hearing to determine his competency. An allegation of a due process violation presents a question of law which we review *de novo*. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 46; *In re Bernice B.*, 352 Ill. App. 3d 167, 174 (2004).

¶ 46 Initially, we find that respondent has forfeited any claim that his right to due process was violated by the failure of the trial court to appoint a GAL. First, the court did appoint a GAL to act on respondent's behalf. Although the court later vacated that appointment, respondent did not object. In this regard, the record reflects that on March 31, 2015, the trial court appointed Tengler to act as the GAL for respondent after Meyer informed the court of his belief that respondent had been found unfit to stand trial in his criminal case. The court later learned that although respondent had undergone a fitness evaluation in his criminal case, there had yet to be a judicial finding of unfitness in the matter. Thus, all it had before it was "a rumor of a fitness

report." The court then asked if anyone would object if it vacated Tengler's appointment as "prematurely made." Hearing no objection, the court vacated Tengler's appointment. Thereafter, respondent never requested the trial court to re-appoint Tengler or anyone else to act as GAL on his behalf. Respondent's failure to object when the court vacated Tengler's appointment as GAL or to request the trial court to re-appoint someone to act as a GAL on his behalf results in forfeiture of this issue on appeal. See *Fawcett v. Reinerstein*, 131 Ill. 2d 380, 386 (1989) (holding that issues not raised in the trial court, even constitutional matters, are generally considered to be forfeited on appeal); *Babikan v. Mruz*, 2011 IL App (1st) 102579, ¶ 13 (noting that the failure to object at trial results in forfeiture of an issue on appeal).

¶ 47 In addition, respondent has forfeited this argument by failing to comply with the provisions of Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). Rule 341(h)(7) requires the appellant's brief to include argument "which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Rule 341(h)(7) further provides that "[p]oints not argued are waived and shall not be raised in the reply brief *** or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Respondent focuses his argument on the failure of the trial court to hold a competency hearing (an issue which we address below). However, he does not cite any relevant authority in support of his claim that his right to due process was violated by the trial court's failure to appoint a GAL to act on his behalf. Instead, he merely directs us to *In re Interest of Keiss*, 40 Ill. App. 3d 1071 (1976), and *In re Mark W.*, 228 Ill. 2d 365 (2008). He cites *Keiss*, for the proposition that "where a parent had previously been adjudicated incompetent or mentally ill, she must be represented by a GAL at a proceeding where she will consent to adoption." He cites *Mark W.* for the proposition that "a juvenile court has the

authority to appoint a GAL for a mentally disabled parent during a termination of parental rights hearing, even where the parent already had a plenary guardian." Respondent, however, does not explain why these cases support his claim that his right to due process was violated by the court's failure to re-appoint a GAL to act on his behalf. Indeed, neither case contains a due-process analysis. We remind respondent that the appellate court is not a repository into which the appellant may foist the burden of argument and research. *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37. Accordingly, we conclude that respondent's failure to properly develop this argument and support it with citation to relevant authority results in forfeiture. See *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37.

¶ 48 We now turn to respondent's claim that his right to due process was violated by the trial court's failure to conduct a competency hearing. As noted above, respondent suggests that the due process protections applicable in the criminal arena should be extended to a proceeding to terminate an individual's parental rights. Pursuant to the Code of Criminal Procedure of 1963, a criminal defendant is presumed fit to stand trial or to plead. 725 ILCS 5/104-10 (West 2014). However, where there is a *bona fide* doubt as to a defendant's fitness, he or she is entitled to a hearing on the matter. 725 ILCS 5/104-11, 104-16 (West 2014). The purpose of the hearing is to determine whether the defendant is fit to stand trial or plead, and, if the defendant is found unfit, whether there is a substantial probability that treatment will return the defendant to fitness within one year. 725 ILCS 5/104-16(d) (West 2014). "In determining whether criminal procedural protections should be applied to civil proceedings, courts should consider whether the statute is punitive in nature and if not, criminal protections would usually not apply." *Bernice B.*, 352 Ill. App. 3d at 175 (citing *United States v. Usery*, 518 U.S. 267, 288 (1996)).

¶ 49 As it relates to parental rights, the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2014)) is not punitive. *Bernice B.*, 352 Ill. App. 3d at 175. Nevertheless, proceedings involving the termination of parental rights involve fundamental liberty interests and invoke some constitutional concerns akin to those implicated in criminal cases. *In re J.R.*, 342 Ill. App. 3d 310, 316 (2003); see also *In re Charles A.*, 367 Ill. App. 3d 800, 802 (2006) ("A parent has a fundamental liberty interest in maintaining custody of his or her child."); *Bernice B.*, 352 Ill. App. 3d at 175. As such, the procedures employed in terminating one's parental rights must comport with the requirements of the due process clause of the United States Constitution (U.S. Const., amend. XIV, § 1 (providing that no state shall "deprive any person of life, liberty, or property, without due process of law")). *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *In re Dar C.*, 2011 IL 111083, ¶ 61; *Charles A.*, 367 Ill. App. 3d at 802-03; *Bernice B.*, 352 Ill. App. 3d at 175-76.

¶ 50 In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court identified three factors to consider in determining what due process requires in proceedings implicating fundamental liberty interests. See *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003); *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). The *Mathews* factors are: (1) the private interest affected by the proceeding; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional or alternative safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or alternative procedures would require. *Mathews*, 424 U.S. at 335.[4]

[4] We note that respondent does not analyze his claim that he was deprived due process by the trial court's failure to hold a competency hearing using the *Mathews* factors.

¶ 51 With respect to the first *Mathews* factor, two private interests are involved in a proceeding to terminate parental rights: the parent's interest in raising his or her child and the child's interest in a safe and stable home. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Regarding the former, we note that a parent has a fundamental interest in the care, custody, and management of his or her child and in maintaining a parental relationship with the child. *Lassiter v. Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 27 (1981); *D.T.*, 212 Ill. 2d at 363; *Charles A.*, 367 Ill. App. 3d at 803; *Bernice B.*, 352 Ill. App. 3d at 176. When a proceeding to terminate one's parental rights is brought, the State seeks not only to infringe this right, but to end it. *Santosky*, 455 U.S. at 759; *Charles A.*, 367 Ill. App. 3d at 803. Therefore, one's parental rights will not be terminated "lightly." *In re M.H.*, 196 Ill. 2d 356, 365 (2001). However, the child also has a private interest in his or her own well-being and in a stable environment. *People v. R.G.*, 131 Ill. 2d 328, 354 (1989). Moreover, a child has an interest in terminating state custody. *Bernice B.*, 352 Ill. App. 3d at 176. Our review of the record in this case establishes that respondent undoubtedly loves his son and is concerned for his welfare. Further, while respondent undoubtedly has an interest in raising the minor, the minor also has an interest in a stable and safe environment. The evidence at the hearing established that the minor had such an environment in the care of the foster family with whom he resides. Prolonging the termination process would place the minor in indefinite limbo.

¶ 52 The second *Mathews* factor requires us to consider to what extent, if any, the absence of a hearing regarding respondent's fitness to stand trial increased the risk that respondent's parental rights were erroneously terminated and to consider the probable value, if any, of additional or substitute procedural safeguards. *Mathews*, 424 U.S. at 335. However, respondent does not identify any additional evidence he would have introduced had he been found mentally fit to

participate in the termination proceedings. Indeed, respondent does not even challenge the trial court's unfitness or best-interest determinations. In other words, respondent presents no evidence or argument indicating that the outcome of the termination proceeding would have been any different had the proceedings been stayed pending a competency hearing. See *Charles A.*, 367 Ill. App. 3d at 804. Additionally, the risk of error to respondent was minimal. In this regard, we note that section 1-5(1) of the Juvenile Court Act of 1987 (705 ILCS 405/1-5(1) (West 2014)) sets forth the rights of parties to proceedings in termination matters. See *In re A.H.*, 359 Ill. App. 3d 173, 185 (2005). Among a parent's right under that provision is the right to be present, to be heard, to present evidence material to the proceedings, and to cross-examine witnesses. 705 ILCS 405/1-5(1) (West 2014). Section 1-5(1) also provides that a parent has the right to be represented by counsel. 705 ILCS 405/1-5(1) (West 2014). Here, respondent was initially represented by various attorneys, but eventually chose to represent himself. At the unfitness phase of the termination hearing, respondent conducted an extensive cross-examination of the State's witness. Further, he called four witnesses, testified on his own behalf, raised objections to the admission of the State's exhibits, and presented closing argument. In addition, at the best-interest phase, respondent cross-examined the State's witness and testified on his own behalf. These procedures properly safeguarded respondent's rights. See *Charles A.*, 367 Ill. App. 3d at 804 (finding that the current procedures provided for under the Juvenile Court Act of 1987 properly safeguard a parent's rights).

¶ 53 The third *Mathews* factor requires us to consider the governmental interests involved in the termination of parental rights proceedings, including the function of the proceeding in question and the fiscal and administrative burdens that requiring a fitness hearing would place on the government. *Mathews*, 424 U.S. at 335. The State has a fundamental interest in a

proceeding to terminate parental rights. *M.H.*, 196 Ill. 2d at 367. The State's interest is twofold. First, the State has a *parens patriae* interest in preserving and promoting a child's welfare. *M.H.*, 196 Ill. 2d at 367. The Illinois General Assembly has recognized that a delay in the adjudication of a proceeding to terminate parental rights "can cause grave harm to a child and the family." 705 ILCS 405/2-14(a) (West 2014); *Charles A.*, 367 Ill. App. 3d at 803. Accordingly, a proceeding to terminate parental rights must be resolved in an expeditious manner. *Charles A.*, 367 Ill. App. 3d at 803-04. The indefinite postponement of a termination proceeding until a hearing on a parent's fitness to stand trial could be conducted or until a parent is restored to fitness would delay the minor's interest in finding a permanent home and therefore frustrate the State's *parens patriae* interest in preserving and promoting the welfare of the child. See *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 177-78.

¶ 54 Additionally, determining whether a parent is mentally fit to stand trial would impose increased and potentially substantial fiscal and administrative burdens on the State. *M.H.*, 196 Ill. 2d at 367; *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 178. The State could be required to expend legal resources to establish the parent's competency and, potentially, pay for the treatment to restore the parent to fitness. *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.* 352 Ill. App. 3d at 178. In addition, the State could be required to pay for the child's foster care during the delay caused by the fitness hearing. *Charles A.*, 367 Ill. App. 3d at 804. The process could take months or years, adding to the fiscal costs and administrative burdens. *Bernice B.*, 352 Ill. App. 3d at 178.

¶ 55 Accordingly, based on our consideration of the factors set forth in *Mathews*, we conclude that the absence of a hearing on respondent's competency did not violate his right to due process.

Hence, we decline to reverse the trial court's termination of respondent's parental rights on this basis.

¶ 56 B. Abuse of Discretion

¶ 57 Respondent next argues that even if the trial court was not required by due process to appoint a GAL or to conduct a competency hearing, the court clearly had the discretion to take either action. According to respondent, however, the trial court mistakenly believed that it had no such discretion. Respondent contends that the trial court's refusal to exercise its discretion due to the mistaken belief that it had no such discretion constituted an abuse of discretion and warrants reversal. The State responds that the trial court appropriately exercised its discretion.

¶ 58 As noted earlier, section 1-5(1) of the Juvenile Court Act of 1987 (705 ILCS 405/1-5(1) (West 2014)) sets forth the rights of parties to proceedings in termination matters. See *A.H.*, 359 Ill. App. 3d at 185. That provision does not expressly provide for the appointment of a GAL for a parent. However, the lack of a statute expressly providing for the appointment of a GAL does not divest the trial court of the authority to do so where the court has concerns about a parent's mental capacity and there is no objection to the appointment. See *Mark W.*, 228 Ill. 2d at 373-75 (approving appointment of GAL for adult adjudged disabled even in the absence of controlling statutory authority); *J.H. and J.D. v. Ada S. McKinley Community Services, Inc.*, 369 Ill. App. 3d 803, 819 (holding that a trial court can appoint a GAL for an adult litigant not yet adjudged disabled where the court has concerns about the mental capacity of the litigant and there is no objection to the appointment of a GAL).

¶ 59 Respondent contends that the trial court mistakenly believed that it did not have discretion to either appoint a GAL to act on his behalf or to hold a competency hearing. Hence, respondent argues that the trial court abused its discretion "because it simply failed to exercise

that discretion on the issue of [his] competence and appointment of a GAL." See *Allstate Insurance Co. v. Rizzi*, 252 Ill. App. 3d 133, 137 (1993) (noting the trial court's refusal to exercise its discretion due to its belief that is has none is error). The record belies respondent's position. First, the trial court actually appointed a GAL to act on respondent's behalf. Although the court later vacated the appointment, it indicated that it was open to re-appointing a GAL for respondent if the need arose in the future. Thus, the court was clearly aware that it had the discretion to appoint a GAL to act on respondent's behalf. Second, the court remarked at the hearing on June 8, 2015, that it did not think that a fitness hearing was necessary but that it would hold one if "the parties want to go forward at some point with a fitness hearing." Therefore, the court was also aware that it had the authority to hold a fitness hearing.

¶ 60 Respondent nevertheless contends that the court's error began when it discharged the GAL "on the mistaken belief that it did not have the authority to do so, and its continued failure to at least hold a competency hearing to determine whether the GAL should have been re-appointed." In support of this claim, respondent cites a passage from the trial court at the June 8, 2015, hearing. At that hearing, Meyer asked the court what would occur "if there's a finding of unfitness down the road." In response, the court remarked:

> "That may impact matters now, but *we don't have the control* and that would be us speculating as to what might happen down the road. I mean, technically—I mean, theoretically [respondent] may resolve his matter out there without ever getting to a finding. All I know is—and I don't know when—all I know is my understanding that there is a jury demand for the fitness hearing that Judge Maher is gonna preside over at some point." (Emphasis added.)

Respondent claims that the court's remark that it did not have "control" demonstrates that the court was under the false impression that it did not have the authority to appoint a GAL or at least hold a fitness hearing. As noted, however, respondent's claim is belied by the record where the court did, in fact, appoint a GAL and it offered to hold a fitness hearing at a future time upon the parties' request. Moreover, we find that respondent takes the court's remarks out of context by reading the italicized language in isolation. When read in its entirety, it is clear that the court was indicating that it did not have control over whether there would be a finding of unfitness in the criminal case. Nevertheless, it offered to hold a fitness hearing if the parties so requested in the future. Hence, contrary to respondent's argument the court was not acting under the mistaken belief that it had no discretion to appoint a GAL for respondent or to hold a competency hearing. Accordingly, we reject respondent's claim that the trial court's failure to exercise that discretion constituted an abuse of discretion.[5]

¶ 61 C. Ineffective Assistance of Counsel

¶ 62 Finally respondent claims that the order terminating his parental rights should be overturned because he did not receive the effective assistance of counsel. In a proceeding to terminate parental rights, a parent is entitled to the effective assistance of counsel. *N.T.*, 2015 IL App (1st) 142391, ¶ 59. Illinois courts apply the standard used in criminal cases to assess the

[5] In his reply brief, respondent suggests that the trial court's decision to vacate the appointment of the GAL and its failure to re-appoint a GAL also constituted an abuse of discretion. However, respondent has forfeited these claims by failing to raise them in his opening brief. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing"); *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 46.

effectiveness of counsel in a parental termination proceeding. *In re M.F.*, 326 Ill. App. 3d 1110, 1119 (2002). Accordingly, we are guided by the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526-27 (1984). Under *Strickland*, a party must establish (1) his or her attorney's performance was deficient, *i.e.*, fell below an objective standard of reasonableness, and (2) prejudice. *Strickland*, 466 U.S. at 687; *People v. Smith*, 195 Ill. 2d 179, 187-88 (2000); *In re S.G.*, 347 Ill. App. 3d 476, 479 (2004). If either prong of the *Strickland* test is not satisfied, then the ineffective-assistance-of-counsel claim fails. *Strickland*, 466 U.S. at 697.

¶ 63 To establish deficient performance under the first prong of *Strickland*, one must overcome the strong presumption that the challenged action or inaction was the product of sound trial strategy. *People v. Houston*, 226 Ill. 2d 135, 144 (2007). As such, matters of trial strategy are generally immune from claims of ineffective assistance of counsel unless counsel's strategy was so unsound that counsel failed to conduct any meaningful adversarial testing. *Smith*, 195 Ill. 2d at 188; *People v. West*, 187 Ill. 2d 418, 432-33 (1999). To establish prejudice under the second prong of *Strickland*, one must prove that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Smith*, 195 Ill. 2d at 188. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220 (2004).

¶ 64 In this case, respondent alleges that he received ineffective assistance of counsel because not one of his attorneys ever requested a competency hearing despite evidence that he was

mentally impaired. Respondent further complains that he received ineffective assistance of counsel because not one of his attorneys moved for the appointment of a GAL.

¶ 65 Here, we cannot say that respondent's attorneys were ineffective for failing to request a competency hearing or the appointment of a GAL. As we explain above, respondent had no due process right to a fitness hearing, so the failure of his attorneys to request one does not constitute ineffective assistance. *N.T.*, 2015 IL App (1st) 142391, ¶ 62. Moreover, respondent has failed to establish prejudice as a result of either the failure to request a competency hearing or the appointment of a GAL. Indeed, on appeal, respondent does not challenge the trial court's unfitness or best-interest determinations on any basis. We note for instance, that the court found defendant unfit on the basis of depravity pursuant to section 50/1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)). Under this provision, there is a rebuttable presumption of depravity if the parent has been criminally convicted of at least three felonies and at least one of the convictions occurred within five years of the filing of the termination motion. 750 ILCS 50/1(D)(i) (West 2014). Here, the court found that the State had established depravity under this provision and that respondent did not rebut the presumption. Moreover, the evidence was overwhelming that it was in the minor's best interest to terminate respondent's parental rights so that that the foster parents could adopt the minor. Respondent does not suggest how the failure to move for a competency hearing or for the appointment of a GAL would have changed this result.[6] Accordingly, we cannot find that respondent received ineffective assistance of counsel as a result of his attorneys' failure to move for the appointment of a GAL to act on his behalf.

[6] In his reply brief, respondent expands upon what the GAL could have accomplished with his medical records. Respondent claims that if a GAL had obtained his medical records, he (respondent) could have participated in the medical services DCFS was prepared to provide. He

¶ 66 III. CONCLUSION

¶ 67 For the reasons set forth above, we affirm the judgment of the circuit court of Winnebago County finding respondent unfit and terminating his parental rights to the minor.

¶ 68 Affirmed.

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states that this "would *** potentially have facilitated the reunification of [him and Tanner, and] Counts 1, 2, and 3 would most likely not have even been plead[ed] by the state if [respondent] had participated in services." This is pure speculation by respondent as he does not indicate what the medical records contain. More significantly, only one ground of unfitness need be proven. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. In this case, the trial court found respondent unfit on all five grounds alleged in the termination petition. Respondent does not suggest how obtaining his medical records would impact the remaining grounds of unfitness.