

No. 1-17-2658

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

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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IN RE C.D. and A.P., minors	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 13 JA 165, 166
v.	)	
	)	
KATHERINE S.P.,	)	Honorable
	)	Richard Stevens,
Respondent-Appellant.)	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

**ORDER**

*Held:* The determination to terminate respondent’s parental rights is affirmed where overwhelming evidence supported a finding that it was in the best interests of the children to be free for adoption, and respondent has not suffered prejudice as a result of her counsel’s alleged ineffective assistance.

¶ 1 Respondent, Katherine S.P., appeals the order of the circuit court finding that it was in the best interests of minors C. D. and A. P. to terminate Katherine’s parental rights, and to appoint a guardian with right to consent to adoption. On appeal, Katherine contends her counsel

provided ineffective assistance where counsel (1) opened the door for admission of damaging testimony that Katherine berated and threatened a caseworker during a conference call with A. P.'s foster parents; (2) elicited unfavorable testimony that Katherine never called C. D.'s foster mother to schedule a visit after being given her telephone number; and (3) failed to make an offer of proof after the court denied counsel's motion to call the children as witnesses. For the following reasons, we affirm.

¶ 2

#### JURISDICTION

¶ 3 On September 25, 2017, the juvenile court entered an order finding Katherine unfit, terminating her parental rights, and appointing a guardian for the minors with the right to consent to adoption. Katherine filed a notice of appeal on October 17, 2017. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017), allowing interlocutory appeals from orders terminating parental rights, and Rule 663 (eff. Oct. 1, 2001), authorizing an appeal from a court order appointing a guardian with power to consent to adoption.

¶ 4

#### BACKGROUND

¶ 5 Katherine is the biological mother of C. D., born July 25, 2003, and A. P., born October 30, 2009. On February 15, 2013, the State filed petitions for adjudication of wardship of C. D. and A. P., alleging that they were neglected based on an environment injurious to their welfare, and abused based on substantial risk of physical injury. Based on the factual allegations of the petitions, the juvenile court placed the minors in the custody of the Department of Children and Family Services (DCFS). The State subsequently amended the petitions to include allegations of sexual abuse against the father of A. P., and Katherine's history of mental illness.

¶ 6 On May 13, 2014, the juvenile court entered an adjudication order on the petitions, finding that C. D. and A. P. were neglected and abused. The court found that A. P.'s biological father, James P., inflicted excessive corporal punishment and physical abuse upon C. D., and sexually abused A. P. The findings were based in part on facts stipulated to by the parties. The parties stipulated that Katherine was diagnosed with a mental illness, prescribed medication, and did not complete a drug treatment program. There was a history of violence between Katherine and James, and acts of domestic violence occurred in the presence of C. D. and A. P.

¶ 7 The stipulation stated that C. D. had been molested by Katherine's friend, was repeatedly hit by James, and expressed fear that James would "ram his head into the wall." On February 4, 2013, C. D. was brought to the attention of his school social worker when he appeared with a laceration and bruising to his nose and upper lip. C. D. informed school personnel that James had punched him in the face with a closed fist and he was afraid to go home.

¶ 8 The court also based its determination on the testimony of A. P.'s foster parents. They had observed 3-year-old A. P. simulating sexual acts and frequently rubbing her vagina. A. P. told her foster parents that her father "hurt her" and she pointed to her vagina. She stated that James put his finger in there and "scratched and scratched and scratched," causing her pain. The court entered a disposition order finding Katherine unable to care for C. D. and A. P., and James unwilling and unfit to parent A. P. The minors were adjudged wards of the court and placed in the guardianship of DCFS.

¶ 9 On December 9, 2016, the State filed supplemental petitions for the appointment of a guardian with right to consent to adoption. The petitions alleged that Katherine was unfit to parent C.D. and A. P. pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). At the unfitness hearing, the juvenile court took judicial notice of its prior findings of abuse and

neglect, and the evidence supporting those findings, and of its August 28, 2014, adjudication of wardship.

¶ 10 The State admitted a number of records, reports, and medical documents into evidence at the hearing. The records showed that after C. D. was born, his biological father had frequent physical altercations with Katherine. When C. D. was four months old, Katherine was hospitalized for four days for suicidal ideation. Katherine and C. D. moved to Kentucky when he was three and they stayed with Katherine's friend. Her friend's husband raped Katherine and forced C. D. to perform oral sex on him. In 2007, C. D. came to daycare with marks and bruises, and he told them that his mother pinched his face until it bled. The Kentucky Department of Child Welfare Services investigated and ordered Katherine to take parenting and anger management classes.

¶ 11 After returning to Illinois, Katherine began her relationship with James. Katherine and James married in 2009, and A. P. was born shortly thereafter. Katherine noted that James was violent, and was easily frustrated to the point he would punch walls or inanimate objects. She observed him picking C. D. up by the head, but she did not intervene because they were in a situation where "she did not know anyone." James was also violent towards Katherine and Katherine sometimes responded by hitting or biting James. C. D. and A. P. witnessed these violent incidents. Katherine also became addicted to Vicodin, which she was prescribed for injuries she sustained as a result of James's abuse. She purchased Vicodin "off the streets" and never received treatment for her addiction. When he was seven years old, C. D. was hospitalized after he threatened to kill himself with a knife.

¶ 12 DCFS began investigations after James was arrested three times for domestic violence against Katherine. C. D. reported that he was afraid of James, who hit him to the point that he "saw spots." He witnessed incidents of domestic violence between Katherine and James, and noted one

time that they argued while A. P. was in a baby carrier, pulling the carrier back and forth between them until she fell out. Katherine was aware that James was hitting C. D., but did not report the abuse because she did not know where she would go if she had to leave the home. C. D. received services from DCFS for clinical depression, anxiety, and “clinically significant executive dysfunction.” He also used obscene language and was physically aggressive. His psychologist found that Katherine’s issues with depression and anxiety, as well as her violent relationships, rendered her “unavailable” to care for C. D. Furthermore, since he has witnessed so much violence, C. D. “learned to see aggression and violence as a normal and acceptable way of dealing with emotions \*\*\*.” He needed a home that provides “high levels of care, consistency, predictability and structure.”

¶ 13 DCFS provided a therapist to A. P., who exhibited sexualized behaviors in her foster homes. She described acts such as “petting” and “sitting on” her father’s “pork chop” which, she explained, was “not food.” A. P. stated that Katherine knew of these incidents and would occasionally ask James to stop, but other times she would direct A. P. to comply with James’s advances. A. P.’s visitations with James were suspended in October 2014, because James “whisper[ed] secrets” to A. P. and she would not disclose what he said. A. P.’s sexualized behaviors “immediately improved” upon suspension of these visits. James failed to make progress in, nor did he consistently attend, required therapy and domestic violence services. He has refused to accept the reasons DCFS took custody of C. D. and A. P., and blames C. D. for DCFS’s involvement with their family.

¶ 14 Katherine believes domestic violence services are not necessary and she refuses to leave James. She does not acknowledge James’s sexual abuse of A. P. and believes the juvenile court’s findings as to the sexual abuse allegations are “wrong.” Clinicians who evaluated her noted that

she has a history of panic attacks and suffers from black-out rages. Katherine fears autonomy and abandonment so she relies on others to make decisions for her. As a result, Katherine has maintained “relationships that are unhealthy and potentially risky.” Katherine was unsuccessfully discharged from her therapy services for lack of participation, and for lack of progress in her treatment goals.

¶ 15 Katherine testified that she has been married to James for almost eight years and that she loves James. She stated that A. P. never told her that James was sexually abusing her, and if she had Katherine might have left James. After the hearing, the juvenile court found Katherine unfit to parent C. D. and A. P. based on grounds b, g, m, and p of the Adoption Act.

¶ 16 At the best interest hearing, Katherine’s counsel requested that C. D. and A. P. appear to testify at the hearing. The public guardian moved to quash Katherine’s motion, arguing that forcing the children to testify would be “clinically inappropriate.” The juvenile court asked Katherine’s counsel to provide an offer of proof for the testimony she wished to elicit, and counsel stated that he expected they would testify to the same things C. D. informed the court of two years prior to trial. The court took the matter under advisement, informing the parties that at the end of the proofs it would allow counsel to explain how the children’s testimony might differ from the evidence presented. The court then took judicial notice of all the evidence admitted at the unfitness hearing.

¶ 17 C. D.’s foster mother, Monica N., testified that she has lived with C. D. since June 2015. He had physical ticks in his shoulders and struggled in school. Monica started reading to him in the evenings, and he started voice lessons and joined a choir. C. D. has since made friends in the neighborhood and he has bonded with her and her extended family. He refers to Monica as “mom,” and to Monica’s father and stepmother as “grandpa” and “grandma.” They have gone on

vacations, including a trip to New York and to Michigan. C. D. has also attended a summer fine arts camp. Monica communicates with A. P.'s foster parents to provide C. D. an opportunity to visit with his sister two times a month, and she plans to continue these visits because A. P. "means a lot to him." She also plans to continue his weekly supervised visits with Katherine because these visits are also "very important" to C. D. On cross-examination, Monica acknowledged that she and Katherine exchanged phone numbers but Katherine has never called to schedule a visit. She testified that C. D. now takes medication for depression and ADHD, and no longer has ticks in his shoulders. She expressed a desire to adopt him because "he is my son, and I love him." On redirect examination, Monica was asked about a phone call between C. D. and Katherine which defense counsel had elicited on cross-examination. The topic of the call had to be "re-directed" because Katherine was frustrated about the case and was talking about that while C. D. "would rather talk about other things."

¶ 18 A. P.'s foster father, Kevin S., also testified. He and his wife have lived with A. P. since June 2016. When she first arrived, she exhibited highly sexualized behaviors and wet herself. She is now a "happy, social and helpful" second-grader who takes lessons in dance and swimming. She plays with children on their block and she helps to take care of the family's pets. She refers to Kevin and his wife as "dad" and "mom," and enjoys visits with extended family. Kevin and his wife have a good relationship with Monica and they plan to coordinate visits between A. P. and C. D. in the future. A. P. now rarely exhibits sexualized behavior and where she used to have accidents weekly, her bed wetting incidents now occur once every two or three months. On cross-examination, Kevin admitted that they have never met Katherine and only participated in a telephone conference with A. P.'s biological parents. They do not plan to maintain monthly visitation between A. P. and Katherine if they adopt A. P. They made this

decision out of concern for A. P.'s safety, and she has not expressed any desire to meet with her biological parents.

¶ 19 Delilah Butler, a former caseworker for C. D. and A. P., testified at the hearing. She has visited the children regularly in their foster homes over the past four years. Butler testified that C. D. and Monica have a good relationship and are very bonded. C. D. has informed Butler that he loves Katherine and wants to maintain a relationship with her, but he wants Monica to adopt him. Butler testified that A. P. is also in a "good, stable home" and was progressing very well in the care of her foster parents. As of August 2017, Katherine and James were still married and living together. On cross-examination, Butler acknowledged that she has not allowed Katherine to meet A. P.'s foster parents. They only had contact once during a DCFS telephone conference which was "not a positive experience." Butler testified that Katherine yelled, screamed, and called Butler the "B word." The experience discouraged Kevin and his wife from having future contact with Katherine. Butler concluded that it was in the best interests of both C. D. and A. P. to terminate parental rights so that they can be adopted by their foster parents.

¶ 20 The present caseworker for the children, Dana Vykouk, testified that C. D. recently informed her that he loves Monica and wants to stay with her. A. P. also looks to her foster parents for love and support, and informed Vykouk that she would like to continue living with them. On cross-examination, counsel asked Vykouk if the children understood what adoption meant and she stated that they knew they would permanently live with their foster parents. When asked whether A. P. understood that adoption meant she might never again see her biological parents, Vykouk admitted that neither child expressed that they never wanted to see their mother again.



¶ 21 The juvenile court then allowed the guardian to make an offer of proof as to his motion to quash Katherine's request that C. D. and A. P. testify. The offer indicated that A. P.'s therapist would testify that A. P. has not had contact with her father for over a year and it would not be in her best interest to testify in person. C. D.'s therapist would state that it was not in his best interest to testify during the hearings because "he would blame himself" and "feel responsible for his mother's rights being terminated." C. D. previously blamed himself for his family's involvement with DCFS and having him testify "would deepen that issue."

¶ 22 Counsel for Katherine argued that the court should hold "in camera" proceedings which would make known "what in fact the minors desires are" as to the termination of Katherine's parental rights. The juvenile court granted the guardian's motion to quash, agreeing with the therapists' conclusions in the offer of proof that it is not in the children's best interest to testify. It further found that Katherine's motion to compel was "merely just a fishing expedition to see what they might say today if subjected to" their parents' lawyers. At this time, the court "is not being asked to approve" an adoption of the minors. Thus, whether the children say they want to be adopted is given "some weight," but it is "only part of the evidence that the court would consider in deciding what's in the best interest of the children, this being a best interest hearing."

¶ 23 In closing, Katherine's counsel argued that C. D. and A. P. did not fully appreciate the consequences of terminating parental rights. Counsel noted that A. P.'s foster parents do not intend to maintain her contact with her biological parents, and the record did not indicate that A. P. wanted to end contact with Katherine. Counsel argued that termination was not in their best interests because they enjoyed visits with their mother. The court acknowledged counsel's arguments and noted that A. P. may not completely understand the legal consequences of adoption, but found it was in C. D.'s and A. P.'s best interest to terminate Katherine's parental

rights and appoint a guardian with the right to consent to adoption. Katherine filed this timely appeal.

¶ 24

#### ANALYSIS

¶ 25 As an initial matter, Katherine argues in her reply brief that this court should strike portions of the State’s brief and the guardian *ad litem*’s brief, which contain arguments concerning the unfitness phase of the termination proceedings. Katherine contends that these arguments are not relevant because she is appealing only the juvenile court’s best interest determination, and they were “presented solely to prejudice Katherine S.P. and to amplify largely irrelevant testimony on the sensitive topic of mental health\*\*\*.” Although the appellate court has discretion to strike portions of a brief that do not conform to the supreme court rules, where such violations do not hinder our review, the striking of a brief in whole or in part is not warranted. *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 440 (2009). Although we deny Katherine’s request to strike portions of these briefs, we will not review the juvenile court’s findings of unfitness and will disregard any arguments challenging the court’s unfitness determination. See *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 17. Instead, we consider only the court’s best interest determination as framed by Katherine’s contentions.

¶ 26 The Juvenile Court Act provides for the termination of parental rights in a two-step process. “First, there must be a showing, based on clear and convincing evidence, that the parent is ‘unfit,’ as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)).” *In re C.W.*, 199 Ill. 2d 198, 210 (2002). After finding the parent unfit, the court next considers whether it is in the best interests of the child to terminate parental rights. *Id.* Katherine

contends that her counsel provided ineffective assistance during the best interest portion of the termination hearing.

¶ 27 The State argues that Katherine’s right to counsel is not a constitutional one, but rather is a statutory one stemming from the Juvenile Court Act. Therefore, she is entitled only to “a reasonable level of assistance,” similar to that granted to defendants in post-conviction proceedings. See *People v. Guest*, 166 Ill. 2d 381, 412 (1995) (finding that since a defendant’s right to counsel is a statutory one in post-conviction proceedings, he is entitled to “a reasonable level of assistance”). We disagree. This court has determined that during termination proceedings, parents are entitled to effective assistance of counsel pursuant to the standard set forth in *Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). See *In Interest of D.M.*, 258 Ill. App. 3d 669, 673-74 (1994); *In re C.C.*, 368 Ill. App. 3d 744, 748 (2006); *In re R.G.*, 165 Ill. App. 3d 112, 127 (1988). To establish ineffective assistance of counsel under *Strickland*, Katherine must show that (1) counsel’s performance fell below an objective standard of reasonableness; and (2) “but for counsel’s deficient performance, the result of the proceeding would have been different.” *People v. Coleman*, 183 Ill. 2d 366, 397 (1998). Katherine must satisfy both elements of the *Strickland* test, and this court may resolve her claim “by reaching only the prejudice component, for lack of prejudice renders irrelevant the issue of counsel’s performance.” *Id.*

¶ 28 At a best-interests hearing during termination proceedings, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d 347, 365 (2004). To make this determination, the juvenile court considers the following factors: (1) the physical safety and welfare of the child; (2) the development of the child’s identity; (3) the familial, cultural, and religious background and ties

of the child; (4) the child's sense of attachments; (5) the child's wishes and long term goals; (6) the child's ties to church, school, friends; (7) the child's need for permanence, including relationships with parent figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks to the child entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). The State must prove by a preponderance of the evidence that it is in the child's best interests to terminate parental rights. *In re D.T.*, 212 Ill. 2d at 366.

¶ 29 The evidence presented at the hearing shows that both C. D. and A. P. are thriving in their foster homes. C. D. no longer exhibits ticks, takes medication for depression and ADHD, is progressing well in school, and is making friends and engaging in activities he enjoys. He and Monica take vacations together, and he has bonded with her and her extended family. It is important to C. D. to maintain contact with A. P. and Katherine, and Monica testified that she plans to continue his visits with them for that reason. Monica stated that she wants to adopt C. D. because "he is my son, and I love him." C. D. told his caseworker that he loves Monica and wants to stay with her.

¶ 30 Since being placed with her foster parents, A. P. no longer exhibits sexualized behaviors and the incidents of her bedwetting have drastically decreased. She is now described as "happy, social and helpful," and enjoys playing with children in her neighborhood. A. P. also enjoys taking dance and swim lessons, and she takes care of her foster family's pets. She refers to her foster parents as "mom" and "dad," and visits with their extended family. A. P.'s foster parents have a good relationship with Monica and plan to coordinate regular visits between A. P. and C. D. However, if they adopt A. P., they do not plan to maintain visits with Katherine out of concern for A. P.'s safety. A. P. has not expressed a desire to continue visits with her biological

parents. She looks to her foster parents for love and support, and informed her caseworker that she would like to continue living with them.

¶ 31 Furthermore, given that Katherine is still married to James and resides with him, the physical safety and health of C. D. and A. P. would benefit if they are freed for adoption by their foster families. Katherine acknowledges that James hits C. D. and she has been unable to stop this abuse. C. D. is afraid of James. James has made it clear that he blames C. D. for getting the family involved with DCFS, and C. D. also blames himself. Katherine also does not fully acknowledge A. P.'s allegations that James sexually abused her. Since A. P. stopped having contact with James, her well-being has greatly improved. Neither James nor Katherine have made progress in addressing and correcting these issues, making it unlikely that they could provide a stable and loving home for their children in the near future.

¶ 32 All of this evidence overwhelmingly supports the termination of Katherine's parental rights so that C. D. and A. P. can be free for adoption by their foster families. Even if Katherine's counsel had not "opened the door" to evidence that Katherine yelled and screamed at Butler during a group phone conversation with A. P.'s foster parents, or had presented an offer of proof that C. D. and A. P. wanted to maintain contact with Katherine, the results of the termination proceeding would not have been different. Katherine argues that these alleged missteps prejudiced her because she was portrayed "as someone who was dangerous and who would not be capable of civil interaction with other persons in her children's lives." However, the juvenile court's consideration in this proceeding is limited to determining whether it is in the children's best interests to be freed for adoption considering the factors set forth in the Juvenile Court Act. *In re M.M.*, 156 Ill. 2d 53, 67 (1993). In this proceeding, "the parent's interest in maintaining the

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parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d at 365.

¶ 33 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 34 Affirmed.