2024 IL App (2d) 230284-U
No. 2-23-0284
Order filed January 16, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re P.F., a minor.	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	
	)	No. 20-JA-76
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Gary F.,	)	Kathryn D. Karyannis,
Respondent-Appellant)	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Kennedy concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that Respondent was an unfit person to have a child were not against the manifest weight of evidence. The trial court's findings that termination of Respondent's parental rights was in the minor's best interest were not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Gary Fecarotta, appeals from the trial court's orders finding him unfit and terminating his parental rights over the minor P.F., Gary's son. Gary contends that the unfitness findings were improper or against the manifest weight of the evidence and that conflicts of interests warrant new hearings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 P.F. was born via surrogate to Gary and Jane Fecarotta on May 11, 2011, in Orange County, Florida. The family eventually moved to Sugar Grove, Kane County, Illinois.

¶ 5 Several concerning incidents occurred before the State filed a petition for adjudication. On the evening of February 21, 2020, into the early morning of February 22, 2020, Jane took P.F. to a restaurant, consumed several alcoholic beverages, and was unable to pay the bill when they attempted to leave around midnight. Jane left P.F. alone in the restaurant and the police were called. Gary eventually came and picked up P.F. DCFS was notified and Jane was indicated for this incident. About a month later, on March 31, 2020, the police were called to the family home for a domestic incident. The police discovered that Jane masturbated in front of P.F. DCFS was notified. Jane was again indicated for this incident and was admitted to the psychiatric unit at Chicago Behavioral Hospital. After this incident, Gary agreed to engage in the Intact Family Services Program.

¶ 6 DCFS intact family workers made several attempts to work with Gary and Jane. However, their attempts were unsuccessful. On June 25, 2020, Gary and Jane refused to engage in the Intact Family Services Program.

¶ 7 On June 26, 2020, P.F. called 911 regarding Jane drunkenly falling down while Gary was away from the home. Police were unable to get ahold of Gary and when he returned home, he refused to give any information regarding where he had been. On June 27, 2020, P.F. was taken into protective custody. A few days later on June 29, 2020, the State filed a petition for adjudication. The next day, a temporary custody order was entered and on July 1, 2020, CASA Kane County was appointed as guardian *ad litem* (GAL) to advocate for P.F. in the proceedings.

¶ 8 The matter proceeded to hearing on the State's amended petition for adjudication (filed on September 17, 2020) on October 14, 2020. The State's amended petition specifically alleged that

Gary failed to protect minor from risk of harm caused by Jane's mental health issues and substance abuse issues. The trial court entered an adjudicatory order finding P.F. to be neglected as defined by 705 ILCS 405/2-3 in that he was in an environment that was injurious to his welfare. The court specifically found that Gary knew about Jane's mental health issues, but continued to allow Jane to be alone with P.F. The court also found that Gary failed to follow through on steps necessary to protect P.F., such as obtaining an order of protection against Jane, not allowing Jane to reside in the home if P.F. was residing there, and participating in intact family services.

¶ 9 At the disposition hearing on November 24, 2020, the trial court found that it was in the best interest of P.F. to make him a ward of the lower court. DCFS also set service plans for Gary and Jane. Gary was found to need the following services: mental health services, parenting classes and coaching, random drug and alcohol drops, substance abuse assessment, and domestic violence assessment. The trial court set the initial permanency goal as P.F. returning home within 12 months. The matter was continued to February 5, 2021, for status of services. At that next hearing, the trial court was advised that Gary had tested positive for alcohol on his most recent drop and that although he had attended his first therapy session and completed his mental health assessment, his behavior during visitation was concerning. Gary would make inappropriate comments towards P.F. regarding the case, which caused P.F. anxiety and confusion. He would also make inappropriate comments to the caseworker, calling him fat and threatening to punch him. The trial court admonished Gary and the case was set for the first permanency review hearing (PRH) on June 18, 2021.

¶ 10 At the first PRH, the trial court noted that Gary had made some efforts and some progress, but they were not reasonable. Gary had completed the domestic violence assessment and started individual therapy. However, it was especially troubling to the trial court that Gary did not seem

to understand why therapy was necessary and why DCFS was involved at all—he denied all wrongdoing. Gary also missed two drug and alcohol drops and was not signing consent forms. The case was continued to give Gary and Jane opportunity to progress in their recommended services as well to give each of them time to complete a psychological evaluation. The permanency goal was determined to be P.F. returning home pending status hearing.

¶ 11 The next PRH took place on September 14, 2021. The trial court acknowledged that while Gary was engaged in services and had made reasonable efforts, he had not yet made reasonable progress. The LSSI permanency hearing report indicated that Gary had interfered with Jane's treatment by leaving her stranded at counseling. He refused to come pick her up. He also called during the middle of another session, and yelled at the counselor asking why Jane was not yet done with counseling. The counselor indicated that they are no longer comfortable with Gary transporting Jane, as his power and control over her was impeding her progress. The LSSI report also indicated that Gary's therapist reported concern regarding his cognitive ability as he seemed unable to remember his treatment plan goals and objectives, and did not seem to remember visits with P.F. Therefore, the therapist recommended a neurological exam and a neuropsychological evaluation. The guardian *ad litem* report prepared for this hearing indicated that Gary continued to not understand why DCFS was involved; he claims he did not do anything wrong. The permanency goal was P.F. returning home within 12 months.

¶ 12 The matter proceeded to status hearings on November 4, 2021, and January 31, 2022, with another PRH on March 7, 2022. The trial court made similar findings as the most recent PRH; that while Gary was engaged in services and had made reasonable efforts, he had not yet made reasonable progress and continued to insist that he had done nothing wrong and doesn't understand why DCFS is involved. The GAL report also noted that several of Gary's most recent drug tests

came back positive for morphine, benzodiazepines, and opiates. He alleged that these were taken in relation to a back problem. The record indicates that proof of these prescriptions was tendered to the trial court, but not to the caseworker. Again, the permanency goal was P.F. returning home within 12 months.

¶ 13 On June 6, 2022, the next PRH was held. The GAL report shared Gary's concerning behavior including excessive delays in signing CASA consent forms, whispering inappropriate comments to P.F. during visitation. Such comments included telling P.F. "do not trust these people, because they are not trying to help you" and "you need to get home soon, because your mother needs you." Gary also encouraged P.F. to "lie about things so the problem will go away." At visitation, the caseworker advised Gary that these comments were inappropriate, but Gary responded he did not understand why. Gary also failed to complete his neuropsychological evaluation and missed other related appointments. He additionally minimized Jane's mental health issues. The trial court found that Gary had made neither reasonable efforts nor progress. The permanency goal was again P.F. returning home within 12 months.

¶ 14 At the permanency review hearing on November 21, 2022, the trial court determined that the permanency goal would change to substitute care pending court determination of parental rights. Upon reviewing the psychological evaluations of both Gary and Jane, the trial court determined that they do not have the capacity to care for P.F. The trial court specifically noted that Gary continually refused to fully cooperate with services and visitation requirements.

¶ 15 The State filed a petition for termination of parental rights on November 21, 2022. In it, they alleged that Gary was an unfit person to have a child in that:

> "A. He is unable to discharge parental responsibilities, as supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of

mental impairment, mental illness or mental retardation as defined in Section 1-116 of the Mental Health of Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period, pursuant to 750 ILCS 50/1(D)(p).

B. He has failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from such parent, or to make reasonable progress toward the return of the child to such parent, during the 9-month period from May 20, 2020 through February 20, 2021 after an adjudication of neglected minor, abused minor or dependent minor under the Juvenile Court Act, under 750 ILCS 50/1(D)(m);

C. He has failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from such parent, or to make reasonable progress toward the return of the child to such parent, during the 9-month period from February 21, 2022 through November 21, 2022 after an adjudication of neglected minor, abused minor or dependent minor under the Juvenile Court Act, under 750 ILCS 50/1(D)(m)."

¶ 16 After the filing of the petition, another permanency review hearing held on April 17, 2023, resulted in parental visitation rights being suspended, as Gary continued to make inappropriate comments to P.F., causing P.F. significant emotional distress, despite being admonished against doing so several times. In this instance, those comments included profanity and abusive language directed at P.F. after P.F. asked Gary why he had not brought Jane to visitation. The trial court also found that Gary and Jane were even less capable of caring for P.F. than they were when the permanency goal originally changed.

¶ 17 A hearing was held on the State's termination petition on July 20, 2023. The trial court took judicial notice of several documents, including P.F.'s birth certificate and various orders entered throughout the pendency of the case. The State then called Laura Gizzi, the Lutheran Social Services caseworker assigned P.F.'s case. She testified that P.F. came into care in June 2020 when he was nine years old. She took over as the assigned caseworker in October 2020. Gizzi testified that Gary was sent for drug tests 12 times between October 2020 and May 2022. He failed to attend seven of those tests. Three of the tests he attended came back positive for morphine, benzodiazepines, and opiates. She also testified that around May 2022, Gary's mental health became a concern. He repeatedly asked the same questions, seemed to lack a memory, and was generally confused. Because of this, she made a referral for a psychological examination. Prior to the examination, Gary was instructed several times to bring Jane, as she was going to be examined as well. Gary did not bring Jane, and ultimately refused to complete the examination. Even so, the psychologist who examined Gary was able to complete a report, which was submitted as People's Exhibit 13.

¶ 18 Of note, the report indicated that "[t]he diagnosis of Narcissistic Personality Disorder can be given with confidence" and "Mr. Fecarotta can no longer distinguish between reality and his shifting fantasies, odd attempts at humor, manipulations and lies. It is predicted that Mr. Fecarotta will never show improvement and that in the near future his behavior and cognitive functioning will continue to decline. It is recommended that a return home should not be a goal for his son."

¶ 19 Gizzi also testified that Gary did not successfully complete individual counseling. In terms of visitation, Gizzi eventually had to supervise the visits herself at the office because Gary would behave inappropriately. He made inappropriate comments to P.F. and caseworkers, inappropriately touched a caseworker, and threatened a caseworker. Gary also gave P.F. a secret phone, despite

being told this was not allowed. Gizzi testified that the visits that she supervised were uncomfortable, inappropriate, and awkward for both herself and P.F. This behavior continued even after Gary completed his parent education class.

¶ 20 Gizzi testified that Gary was not cooperative throughout the pendency of the case. He refused to return phone calls, sign consent forms, be on time for visits, or answer basic questions. Any information he gave was conflicting and confusing. He also impeded Gizzi's ability to provide services to Jane. He refused to allow direct contact with Jane and refused to transport her to services. Ultimately, Gizzi concluded that neither Gary nor Jane had made progress towards the return of P.F., even after completion of some of the recommended services. After Gizzi's testimony, all parties rested and proceeded to closing arguments. The next day, the trial court found both parents to be unfit. Specifically, the trial court found:

> "In relation to Mr. Fecarotta and my findings that clearly and convincingly he is an unfit parent and that the State has proven the allegations in Paragraphs 7A, B, and C. I find that the only services he completed were the parenting education and the domestic violence assessment. And again, in relation to domestic violence, I don't find that that assessment was particularly helpful, because he was denying during this assessment domestic violence, despite having reported it at previous and other occasions. He never successfully completed individual therapy, he did not show proof of completion or progress. He failed to appear for more than fifty percent of his drops. His visits were never able to be increased over the time the case was in care prior to the goal changing, which was for more than two years. Most of his visits were described as inappropriate and uncomfortable as this was a description made by Ms. Gizzi, who was a Caseworker in the case over almost the entire

> case and who had over six years of experience in child welfare cases. So not an inexperienced worker.
>
> Mr. Fecarotta had inappropriate conversations with his child during visits. He was described as at times being mean, rude, or hurtful with an example given of him showing [P.F.] a picture of his girlfriend during a visit while he knew [P.F.] knew his mother was sick. *** This behavior by Mr. Fecarotta the testimony was on several occasions caused [P.F.] to cry or become teary-eyed and upset. Mr. Fecarotta was not cooperative with Ms. Gizzi, his caseworker. He gave guarded information, conflicting, and confusing information, would walk away when questions were asked rather than answering the questions. He would not return phone calls. He never made progress in relation to why his son was in care. Always blaming Ms. Fecarotta for why the child was in care. ***
>
> *** He either intentionally and consciously decided that he didn't want to make progress and didn't want to accept help *** or he was unable because of his mental and cognitive declines to make that progress."

¶ 21 The trial court then moved on to a best-interests hearing. The State again called Gizzi as their sole witness. She testified that P.F. is currently placed with an appropriate foster family who is willing to adopt a foster child, but has not yet committed to adopting P.F. P.F. is doing well in his placement. She also testified that P.F.'s therapist, who had expressed interest in potentially adopting P.F., reported that termination of parental rights would be in P.F.'s best interests. When asked if that constituted a conflict of interest, Gizzi testified that it did not. The trial court also took judicial notice of the CASA best interests report, and the parties proceeded to closing arguments. The trial court found that termination of parental rights was in P.F.'s best interests:

"I have had an opportunity to review the CASA report and the testimony and I find the testimony of Ms. Gizzi credible in relation to the best interests portion of the proceeding. I've also considered, as requested, the prior testimony and exhibits from the unfitness portion of the proceeding, and I have considered the factors in the best interests section of the statute at 705 ILCS 405/1-3(4.05) and I find by a preponderance of the evidence that it is in the best interests of [P.F.] that the parental rights of his mother, Jane Fecarotta, and his father, Gary Fecarotta, be permanently terminated with respect to [P.F.].

I base this on the prior evidence and testimony of lack of progress and—and simple inability of either of the parents to provide a safe home in the opinion of Doctor O'Riordan that these parents will never be able to provide a safe home for [P.F.], as well as the testimony that [P.F.] is developing a relationship in his current foster parent placement. He loves that foster placement. He wants to stay there. *** This child deserves permanency.

***Again, [P.F.] is a smart young guy. He has always been concerned about his mother's mental health. He has always been, according to—I think it was Doctor O'Riordan's report, feeling like he was parenting his parents. He was the one that had to take care of his parents. [P.F.] is going to always be concerned for his mother whether her rights are terminated or not. *** What controls now is to give [P.F.] the opportunity to be in a safe, loving, nurturing home that cannot be provided by either of his parents. It's beyond clear to me beyond a preponderance of the evidence that the parental rights of both Ms. Fecarotta and Mr. Fecarotta should be permanently terminated, and I do so order."

¶ 22 On July 24, 2023, the trial court entered a written termination hearing order. The order indicated that the court had found the State had proven by clear and convincing evidence that (1) Gary was unfit to have a child as alleged in paragraphs 7a, 7b, and 7c of the State's termination

petition (see *supra* ¶ 14) and (2) termination was in P.F.'s best interests. This timely appeal follows.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Gary F. contends that (1) the trial court erred in finding Gary unfit as alleged in paragraph 7a, b, and c of the State's termination petition; (2) the trial court erred in finding that termination was in P.F.'s best interests because the trial court should have explored the potential conflict of interest with P.F.'s therapist and the trial court should have appointed an attorney to represent the minor; and (3) there was a *pe se* conflict of interest when the same attorney appeared for DCFS and the State during the same proceeding. For the reasons that follow, we disagree with all three contentions.

¶ 25 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2020)) lays out a two-step process for termination of parental rights. First, the State must prove by clear and convincing evidence that the parent is unfit. *In re Kenyon R.*, 2017 IL App (2d) 160657, ¶ 16. Section 1(D) of the Act lays out 22 potential grounds for unfitness. 705 ILCS 50/1(D) (West 2020). A single ground of unfitness is sufficient to support a finding of unfitness. *In re Kenyon R.*, 2017 IL App (2d) 160657, ¶ 16. Second, once the trial court has found a parent unfit, the State must prove by a preponderance of the evidence, whether it is in the minor's best interests to terminate parental rights. *Id.* A trial court's findings regarding parental unfitness or the best interests of a child will not be disturbed unless they are against the manifest weight of the evidence. *In re Tr. A.*, 2020 IL App (2d) 200225, ¶ 32. A decision is against the manifest weight of the evidence "only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re N.B.*, 2019 IL App (2d) 180797, ¶ 30 (quoting *In re Kenyon R.*, 2017 IL App (2d) 160657, ¶ 22).

¶ 26 As an opening note, the State concedes that the trial court erred in finding Gary unfit as alleged in paragraph 7b of the State's termination petition, as the time period alleged began before the adjudication of neglect. We agree. P.F. was adjudicated neglected on October 14, 2020. Paragraph 7b of the State's termination petition alleges that Gary failed to make reasonable efforts or reasonable progress from May 20, 2020, through February 20, 2021. May 20, 2020, is approximately five months before P.F. was adjudicated neglected. It therefore would be impossible for the State to prove paragraph 7b of their petition. Accordingly, we reverse the trial court's finding of unfitness as to paragraph 7b of the State's petition.

¶ 27 Turning now to Gary's other contentions—that the State failed to prove by clear and convincing evidence paragraph 7c of their petition. The State alleges in paragraph 7c that Gary "failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from such parent, *or* to make reasonable progress toward the return of the child to such parent, during the 9-month period from February 21, 2022 through November 21, 2022 after an adjudication of neglected minor, abused minor or dependent minor under the Juvenile Court Act, under 750 ILCS 50/1(D)(m)." Gary argues that because the State did not prove that Gary had failed to make reasonable efforts, that they could not have proved paragraph 7c of their petition. However, paragraph 7c alleges that Gary failed to make reasonable efforts *or* reasonable progress towards the return of P.F. during the nine-month period of February 21, 2022, to November 21, 2022. The use of "or" in this paragraph is disjunctive, material to either side of the "or" must be viewed separately. Applying that principle here, the State could have proven paragraph 7c of their petition by proving either that Gary failed to make reasonable efforts or that he failed to make reasonable progress. Proof of both allegations was not necessary. Accordingly, we reject Gary's

argument that the State failed to prove paragraph 7c of their petition as they did not prove he failed to make reasonable efforts.

¶ 28 We also disagree that the State did not prove that Gary failed to make reasonable progress toward the return of P.F. from February 21, 2022 through November 21, 2022. "Reasonable progress" is an objective standard that is not concerned with a parent's individual efforts and abilities. *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 21. Although Gary seemingly made reasonable efforts at the beginning of this nine-month period, as he notes in his brief, this quickly deteriorated. Gary was scheduled for a psychological evaluation on March 29, 2022. He canceled at the last minute, and the evaluation was rescheduled for April 7, 2022. Gizzi advised Gary that he was to bring Jane to the evaluation as well, as they had evaluations scheduled back-to-back. Gary did not do so. He also refused to complete the entirety of the evaluation. The plan was for him to complete the evaluation on May 9, 2022, when Jane's evaluation was scheduled. Neither Gary nor Jane showed up for this evaluation. The evaluation was then rescheduled to May 28, 2022, at the Fecarotta home. That day, the evaluator and Gizzi arrived at the Fecarotta home for the evaluation. Gary aggressively said that he did not want Gizzi in his home. Because of this, the evaluation could not be completed. On June 20, 2022, Gizzi drove Jane to her evaluation at the LSSI offices, as Gary was continually refusing to transport her. Though Jane's evaluation was able to be conducted that day, Gary arrived after Jane for a previously scheduled visit with P.F. and acted rudely and aggressively towards the psychologist and Gizzi. He interrupted Jane's evaluation and made comments afterwards questioning the evaluator's credentials.

¶ 29 In June 2022, the trial court noted that Gary had still not yet completed his neuropsychological evaluation or his psychological evaluation, despite these having been recommended in July 2021. Gary also continued to make inappropriate comments to P.F. during

visitation, such as "you need to get home soon because your mother needs you" and "do not trust these people because they aren't trying to help you." These comments were made *after* Gary had completed a parenting class and after being admonished that such comments were inappropriate.

¶ 30 At the next hearing in September 2022, it was noted that although Gary had participated in part of the psychological evaluation, he refused to complete the final portion. The portion he did complete revealed some concerning findings, including that "[t]he diagnosis of Narcissistic Personality Disorder can be given with confidence." Further:

> "Mr. Fecarotta can no longer distinguish between reality and his shifting fantasies, odd attempts at humor, manipulations and lies. It is predicted that Mr. Fecarotta will never show improvement and that in the near future his behavior and cognitive functioning will continue to decline. It is recommended that a return home should not be a goal for his son."

¶ 31 Gary also presented the trial court with a letter from a doctor, representing it as his neuropsychological evaluation. Laura Gizzi, the Lutheran Social Services caseworker, advised that the documentation provided was not sufficient, as it was not an evaluation or an assessment; it was a letter. Gary, in his brief, states that this letter was improperly discounted but provides little to no support as to why it was improperly discounted. The record shows conversations between Gizzi and Gary's attorney, explaining why the letter provided was not sufficient and outlining plans to get the necessary information from the doctor or to schedule a follow-up.

¶ 32 In November 2022, the trial court changed the permanency goal because Gary was still not cooperating with all services, refused to comply with visitation instructions, and still downplayed Jane's mental illness, denying her diagnoses (see *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 40-41 (father found unfit because he downplayed or denied significance of mental illness of mother and its impact on child)). He also continued to demonstrate a lack of understanding of why DCFS had

become involved and made that known to everyone involved, including P.F. The State subsequently filed a petition for termination of parental rights.

¶ 33 Throughout the nine-month period of February 21, 2022, to November 21, 2022, Gary time and time again showed his inability to comply with DCFS recommendations—whether by failing to follow simple visitation rules or by refusing to complete evaluations. In looking at the totality of the record, it is clear that the trial court's finding that Gary failed to make reasonable progress during the nine-month period of February 21, 2022, to November 21, 2022, was not against the manifest weight of the evidence.

¶ 34 Because only one ground of unfitness is necessary to support a finding of unfitness (*In re Kenyon R.*, 2017 IL App (2d) 160657, ¶ 16), we will not address paragraph 7a of the State's petition, that Gary is unfit due to mental impairment, mental illness, or mental retardation as defined in Section 1-116 of the Mental Health of Developmental Disabilities Code.

¶ 35 Gary additionally argues that the trial court's finding that termination of Gary's parental rights was in P.F.'s best interests was against the manifest weight of the evidence. Gary specifically contends that (1) the trial court should have explored the potential conflict of interest with P.F.'s therapist and (2) the trial court should have appointed an attorney to represent the minor. We disagree.

¶ 36 Gary first argues that the credibility of P.F.'s therapist is in question because of his potential interest in adopting P.F. In other words, P.F.'s therapist had a vested interest in advocating for termination of parental rights, and therefore the trial court should not have relied on his report in making its best-interests finding. Credibility findings are within the sole discretion of the trial court, as they are in the best position to make such findings. *In re S.R.*, 326 Ill. App. 3d 356, 360 (2001). The trial court found both Gizzi's testimony and P.F.'s therapist's report to be credible,

despite the therapist's potential interest in adopting P.F. Further, there is nothing in the record that indicates that the trial court based its findings on the therapist's potential adoption of P.F.

¶ 37 Additionally, even without the therapist's report, the State presented sufficient evidence that termination was in P.F.'s best interests. Section 1-3(4.05) of the Adoption Act (705 ILCS 405/1-3(4.05) (West 2022)) sets forth various factors for the trial court to consider in assessing a child's best interests including: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachment, including where the child feels love, attachment, and security; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to 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 2022). However, each of these factors do not need to be explicitly referenced by the trial court. *In re Nevaeh R.,* 2017 IL App (2d) 170229, ¶ 27.

¶ 38 Here, the trial court specifically noted that it had considered all of the statutory factors, with specific emphasis on permanence. In making its finding, the trial court relied on Gizzi's testimony along with the GAL report. Gizzi testified that it was in P.F.'s best interests to terminate Gary and Jane's parental rights. She had met with him recently, and he had indicated that he didn't just like his current placement, he loved it. Although the current placement he is in was not officially pre-adoptive, the foster parents were very interested in potentially adopting. All of this indicates that P.F. felt love, attachment, and security at his current placement. The GAL also prepared a report for the court to review that indicated termination of parental rights would be in P.F.'s best interests. The GAL relied on interviews with the foster parents, Gizzi, and P.F. in

formulating this opinion. Given Gizzi's testimony regarding the potential conflict, as well as the totality of the evidence in support of the best interests finding, Gary's argument fails.

¶ 39 We also do not agree with Gary's contention that the trial court should have appointed an attorney to represent the minor. Gary argues that had P.F. been appointed counsel, perhaps they would have investigated the potential conflict with P.F.'s therapist more thoroughly. However, this is baseless speculation that is unsupported by anything in the record. From the onset of the adjudication, P.F. was appointed a GAL who was represented by counsel. Counsel appeared at court dates consistently throughout the proceedings, advocating for P.F. The fact that P.F. was not appointed independent counsel does not somehow render all of the evidence presented at the best interests hearing irrelevant. We do not find merit in Gary's argument. Accordingly, we find that the trial court's finding that termination of Gary's parental rights was in P.F.'s best interests was not against the manifest weight of the evidence.

¶ 40 Finally, Gary argues that because one of the DCFS attorneys, who made only two appearances for DCFS, later represented the State in the proceedings, a *per se* conflict of interest exists. We note that Gary forfeited review of this issue by not objecting at trial and by not including it in a posttrial motion. Even so, we do not find merit in his argument.

¶ 41 We review *de novo* whether a conflict of interest existed in the proceedings. *People v. Miller*, 199 Ill. 2d 541, 544 (2002). A conflict-of-interest claim is a specific form of an ineffective assistance claim, in which the party essentially asserts that a conflict rendered the attorney's performance substandard. *In re Br. M.*, 2021 IL 125969, ¶ 44. A *per se* conflict, such as the one Gary is asserting exists, arises when "the attorney had or has 'a tie to a person or entity' that would benefit from a verdict unfavorable to the client." *Id.* There are only three situations in which we have recognized *per se* conflicts to exist:

> "(1) when defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity assisting the prosecution [citations]; (2) when defense counsel contemporaneously represents a prosecution witness [citations]; and (3) when defense counsel was a former prosecutor who had been personally involved in the prosecution of the defendant [citation]." *People v. Hernandez*, 232 Ill. 2d 134, (2008).

The supreme court made clear in *In re Br. M.*, that these three situations are "a closed set." *In re Br. M.*, 2021 IL 125969, ¶ 55. It follows that any relationship outside of these three situations cannot constitute a *per se* conflict of interest. Here, Gary is asking us to extend the *per se* conflict of interest rule far beyond its existing scope, and in doing so, has relied exclusively on caselaw that has been explicitly overturned by the supreme court. See *In re Br. M.*, 2021 IL 125969, ¶ 53 (overruling *In re Darius G.*, 406 Ill. App. 3d 727 (2010)).

¶ 42 The focus of all three *per se* conflict of interest situations revolve around *defense counsel's* associations or representations. Gary does not allege any issue with his own counsel; rather, with the counsel for the State. Obviously, this does not present any of the three *per se* conflict of interest situations recognized by Illinois courts. Therefore, we cannot find that a *per se* conflict of interest existed and Gary's argument fails.

¶ 43 The termination of parental rights is a severe consequence and is not done lightly. Here, P.F. was a ward of the court for nearly three years, during which time, Gary was combative, uncooperative, and detrimental to P.F.'s mental health. After careful review of the record, we agree with the trial court that the State did prove by clear and convincing evidence that Gary failed to make progress towards the return of P.F. from February 21, 2022, through November 21, 2022, and that termination of his parental rights was in P.F.'s best interests.

¶ 44 III. CONCLUSION

¶ 45 For the aforementioned reasons, we affirm the judgment of the circuit court of Kane County.

¶ 46 Affirmed.