

No. 1-11-1584

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re NICOLE K.,

Minor-Respondent-Appellee

(The People of the State of Illinois,

Petitioner-Appellee,

v.

Dina K.,

Respondent-Appellant).

Appeal from the
Circuit Court of
Cook County

No. 07 JA 1109

Honorable
Candace Fabri,
Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R. E. Gordon and Justice Lampkin concurred in the judgement.

ORDER

- ¶ 1 *HELD:* The circuit court's decision to vacate and terminate the Department of Children and Family Services' guardianship of the minor, appoint private guardians, and close the case was not against the manifest weight of the evidence.
- ¶ 2 Mother-respondent-appellant, Dina K., appeals the May 6, 2011, decision of the

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circuit court of Cook County to (1) vacate and terminate the Department of Children and Family Services' (DCFS) guardianship of the minor, Nicole K., (2) appoint private guardians, and (3) close the case. The court ruled it was in the best interest of Nicole to appoint Liz M. and Tom D. as her private guardians. Dina asserts the court's decision to grant private guardianship and close the case was against the manifest weight of the evidence because she had unsupervised visits with her daughter, was bonded to and desired the return of Nicole to her custody, which she claims Nicole wanted as well, and she had engaged in services, which provided evidence that she could parent her child. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Dina and William S. are the parents of Nicole, born January 17, 1999. William is not a party to this appeal.

¶ 5 On December 31, 2007, the State filed a petition for adjudication of wardship of Nicole, alleging that she was neglected due to an injurious environment. The State alleged that DCFS got involved in this case soon after Nicole, age 8 at the time, was found alone outside, sitting on a curb, on December 21, 2007. Dina did not contact the police to request assistance to locate Nicole. Also, on or about December 27, 2007, Dina left Nicole alone in a store for approximately one hour. Following that incident, DCFS offered to provide Dina its services, but she refused. In addition, Dina refused to disclose any information regarding the identity of Nicole's father.

¶ 6 In addition to the petition, the State moved to appoint DCFS administrator, D. Jean Ortega-Piron, as temporary custodian of Nicole, alleging there was probable cause to find Nicole

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was neglected. An affidavit documenting DCFS' efforts was attached to the motion, which stated the home environment presented health risks for the minor. The affidavit averred the home had no heat or water and the family had been living under those conditions for months. The affidavit also stated Dina owed 10 months rent and no other family member was available to care for Nicole.

¶ 7 A hearing was held on the State's motion on December 31, 2007. Dina appeared in court and an assistant public defender was appointed to represent her. An assistant public guardian was appointed as attorney and guardian *ad litem* for Nicole. The court granted the State's motion and placed Nicole under the temporary custody of the DCFS administrator.

¶ 8 On January 11, 2008, the circuit court entered an order returning Nicole to Dina's custody under an order of protection pursuant to section 2-25 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-25 (West 2008)). The court also granted leave to the State to issue service by publication to Nicole's putative father, William.

¶ 9 On February 25, 2008, the Public Guardian, as counsel for Nicole, filed an emergency motion seeking to amend the section 2-25 order of protection and for a finding that Dina had violated the original order of protection. The Public Guardian alleged Nicole had eight unexcused absences from school from February 4, 2008 to February 15, 2008. The Public Guardian also alleged Dina had yet to sign the necessary consent forms for the release of Dina's mental health information. The Public Guardian withdrew the motion when Dina signed the consent forms during the court proceedings.

¶ 10 William filed his appearance on February 27, 2008. On the same day, the circuit court

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entered an order granting William supervised visits with Nicole.

¶ 11 On March 11, 2008, the State moved for leave to amend its petition for adjudication of warship to add supporting facts to the claim of neglect based on an injurious environment. On January 7, 2007, the State sought to add that a domestic relations court ordered Dina to "immediately enroll [Nicole] in the public school in the district in which she resides." According to the motion, Dina did not enroll Nicole in the local school until March 15, 2007. The motion added that, between September 2007 and December 2007, Nicole missed 11 days of school, five of which were unexcused absences and Nicole was tardy for school on seven occasions during the same time period. The circuit court granted the State's motion on March 17, 2008.

¶ 12 On August 5, 2008, Dina filed an emergency motion to close the case so she could move to Wisconsin. The circuit court denied the motion and ordered Dina to notify the Public Guardian and the assigned agency, the Lutheran Social Services of Illinois (LSSI), at least seven days prior to a change of address. The order stated that the notification "must be in writing and include (at a minimum) the new address, phone number, and the school in which Nicole will be enrolled."

¶ 13 The Public Guardian filed an emergency motion requesting a status hearing on August 26, 2008. According to the motion, the last contact the assigned caseworker had with Nicole was in May. The assigned caseworker was unable to contact Dina via telephone or at her last known address for over a week. The Public Guardian sought to determine Nicole's whereabouts to ensure her safety and her school attendance. The circuit court entered an immediate order

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requiring Dina to produce Nicole in court within 48 hours. The record is unclear whether Dina produced Nicole pursuant to the court order.

¶ 14 On August 28, 2008, the assistant public defender was granted leave to withdraw as counsel for Dina. The circuit court appointed a private attorney to represent Dina.

¶ 15 On October 31, 2008 and again on December 2, 2008, the Public Guardian filed motions alleging Dina had violated the section 2-25 order of protection. The first motion alleged five violations: (1) Dina did not cooperate with DCFS; (2) Dina did not sign all releases of information for referrals made; (3) Dina did not attend family counseling and follow all recommendations; (4) Dina did not attend and complete parenting skills classes; and (5) Dina failed to provide any assurances Nicole attends family therapy and individual therapy. The second motion alleged similar violations: (1) Dina did not cooperate with DCFS; (2) Dina did not ensure that, at all times, there is an appropriate care plan for Nicole with an appropriate person who has agreed to take care of her; (3) Dina did not ensure that Nicole attend all necessary medical appointments and follow all medical instructions for her care; and (4) Dina did not ensure that Nicole attend school daily. The second motion also alleged that on November 28, 2008, the assigned caseworker received a message from Dina stating that Nicole was at Disney World in Florida with Dina's landlord and his fifteen-year-old daughter. The motion alleged that since starting school in September 2008, Nicole missed nineteen days and had not attended school since November 17, 2008. The motions were entered and continued until December 9.

¶ 16 The circuit court entered an order on December 9, 2008 granting the Public Guardian's

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motions for violations of the section 2-25 order of protection. The court ordered Dina to sign consent releases for Nicole's therapy services as well as Dina's individual and family therapy services from all providers for services rendered since January 11, 2008. The court entered a supplemental protective order pursuant to section 2-25 requiring court approval for Nicole to move or relocate out of state. The supplemental protective order required Dina to receive court approval seven days in advance of any time that Nicole was to travel out of state. It also mandated that Dina sign all consents for releases of information for all therapy providers.

¶ 17 On February 11, 2009, the Public Guardian filed a motion alleging that Dina failed to fully comply with the circuit court's order of December 9, 2008. The motion alleged four separate violations: (1) Dina failed to fully cooperate with DCFS; (2) Dina failed to provide a care plan to ensure that Nicole had an appropriate person to take care of her whenever she was outside of Dina's supervision; (3) Dina failed to ensure that Nicole attend school daily; and (4) Dina failed to sign all consents for releases of information for individual and family therapy for Nicole as well as individual and family therapy for Dina from any providers dating back to January 11, 2008. The assigned caseworker was unable to contact Dina by telephone or in person from December 8, 2008, until February 9, 2009, when she made an unannounced visit at Dina's home. The motion alleged that on three different occasions in January 2009, Nicole had arrived late to school without being accompanied by an adult to check her in. The motion alleged that on one occasion, Nicole walked two miles alone to school. The motion also stated that Nicole missed every school day from February 2, 2009 through February 11, 2009. A doctor's note, dated February 4, 2009, was attached as an exhibit to the motion, stating that

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Nicole was being treated at a clinic and would return to school on either February 6, 2009 or February 9, 2009 if she was feeling better. In addition, the motion alleged that Dina failed to provide the caseworker with the requested information regarding the landlord, with whom Nicole was left from January 13, 2009 to January 17, 2009. The motion also stated that on January 30, 2009, an order of protection was entered against Dina by her landlord. Dina attempted to obtain an order of protection against her landlord, but her request was denied.

¶ 18 On February 18, 2009, the circuit court granted the Public Guardian's motion. The court found probable cause that Nicole was abused and neglected and that Dina violated the section 2-25 order of protection and supplemental protective order. Based on the probable cause finding of abuse and neglect, the court vacated the section 2-25 order of protection. The court found an immediate and urgent necessity to remove Nicole from Dina's home. Consistent with the health, safety and best interests Nicole, the court granted temporary custody of Nicole to DCFS with the right to place her with a foster home.

¶ 19 On February 27, 2009, the circuit court conducted an adjudication hearing. The parties entered into a stipulation of facts regarding a previous DCFS investigation concerning inadequate supervision of Nicole. According to the stipulation, Mary Ann Okocha, a DCFS child protection investigator, responded to a December 21, 2007, telephone hotline call reporting that Nicole was sitting alone on a curb. Okocha attempted to make contact with Dina and Nicole at their home on December 27, 2007. When no one answered the door, she met the landlord of the building, who assured her that Dina and Nicole resided at that location and that both were currently in the apartment. Okocha and the landlord went to the back door of Dina's apartment,

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at which point Dina and Nicole came outside. When Dina saw Okocha, she took Nicole by the hand and went back inside the apartment. Okocha knocked on the door to the apartment, identifying herself as a DCFS investigator. After 10 minutes of intermittent knocking, Okocha informed Dina that she was contacting the police. Chicago Police Officer Samantha Nickeas arrived at the apartment shortly thereafter. The officer knocked on the door to the apartment and, after no response, radioed a sergeant for backup. Following the sergeant's arrival, the officers again knocked on the door and announced their office. After no response, the officers broke open the front door to the apartment, where they found Dina sitting alone. Okocha asked Dina where Nicole was and Dina responded that she was with a neighbor, but could not provide the name or address of the neighbor. The officers arrested Dina and took her to the police station with Okocha following in her vehicle. Upon leaving Dina's apartment, the officers and Okocha entered a nearby store and found Nicole alone.

¶ 20 Okocha met with Nicole in her office later that day. Nicole told Okocha that she and her mother had been living in the apartment without heat or light for months. They used Dina's cellular telephone for light and warmed the apartment with a space heater. The stipulation provided that Dina refused to cooperate with Okocha regarding a safety plan.

¶ 21 The parties also stipulated that Nicole was not enrolled at Daniel Boone Elementary School, Nicole's grammar school based on her residency, until March 15, 2007. Nicole should have been registered by January 2007. Following her enrollment at Daniel Boone, Nicole missed 11 days of school and was tardy on seven occasions. The school sent Dina a letter informing her of the unexcused absences, but received no response.

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¶ 22 The parties stipulated that the evidence presented during the adjudication hearing was sufficient to establish a finding of "neglect-injurious environment." Based on the parties' stipulations, the circuit court entered an adjudication order finding that Nicole was neglected based on an injurious environment as defined in section 2-3 of the Act (705 ILCS 405/2-3 (West 2008)).

¶ 23 On March 17, 2009, the circuit court entered a disposition order, adjudicating Nicole a ward of the court. The court found that Dina was unable, and William was unwilling, to care for Nicole. The court placed Nicole under the guardianship of DCFS administrator Ortega Piron. Nicole was placed in the foster home of Liz and Tom.

¶ 24 On June 17, 2009, the circuit court entered an order granting Dina's attorney leave to withdraw. The court appointed a second private attorney to represent Dina.

¶ 25 The circuit court entered a permanency order on August 19, 2009, designating the permanency goal for Nicole as "return home pending status." The court reasoned: "Nicole remains in a stable, supportive foster placement at this time. Nicole's mother, [Dina], has not consistently engaged in recommended reunification services." The court found Dina "has not made substantial progress."

¶ 26 On December 21, 2009, Dina filed an emergency motion to compel supervised visitation. She alleged she had not seen Nicole since November 16, 2009, and she had been fully compliant and cooperative with all services in recent months. The motion acknowledged that during a visit supervised by the foster parents on November 16, 2009, Dina called the foster mother a "bitch." The motion explained that Dina sent an apology letter to the LSSI caseworker following the

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incident. The motion asserted that since the incident, LSSI cancelled all visits allegedly because Nicole did not want to see her mother. The motion requested that LSSI work on the goal of reunification and not let Nicole control the case.

¶ 27 The circuit court heard Dina's emergency motion on January 8, 2010, and entered an order stating "family therapy and therapeutically [*sic*] supervised visits are to begin between [Dina] and [Nicole] on a weekly basis," and "[t]he maximum amount of time spent weekly should be two hours." The order directed that Dina "never to ask Nicole if she wants to return home."

¶ 28 On February 26, 2010, the Public Guardian filed an emergency motion to amend the January 8, 2010, order. The motion alleged that family therapy and supervised visits began on January 13, 2010, and the family therapists reported that Dina was "intrusive" to Nicole during the visits, making the interaction unhealthy. The therapists concluded that weekly family visitations were emotionally overwhelming for Nicole and recommended bimonthly, supervised visits.

¶ 29 In Dina's response to the emergency motion, she requested that family therapy continue with modifications and weekly visitation with Nicole. Dina asserted the report from her psychologist, Dr. Michael Fields, supported increased supervised visitation to enhance the relationship between mother and daughter.

¶ 30 On March 3, 2010, the circuit court entered an order permitting the clinicians to proceed with family therapy and visitation as they deemed appropriate and consistent with Nicole's best interest. The order provided family therapy "will be 'put on hold,' " and allowed for bimonthly

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visitation.

¶ 31 On March 10, 2010, the foster parents filed a motion to intervene, requesting access to evaluations and assessments of Nicole during the guardianship proceedings. The motion asserted it "is in 'Nicole's best interest' to allow the people responsible for Nicole's physical care and custody to have a role in the case since they have the most comprehensive current knowledge about Nicole and are in the best position to assist the Court in making the best decisions about Nicole as the issues arise, sometimes in open court." The State filed a response in support. "It is the People's position that due to the mother's allegations regarding the foster home and the need for stability in Nicole's life, it would be in the minor's best interest to grant the foster parents' motion to intervene." The Public Guardian likewise supported the foster parents' motion to intervene.

¶ 32 Dina opposed the motion to intervene, asserting there is no rationale for the foster parents to intervene other than an effort to better their position to seek custody. Granting intervention would run counter to the reunification goal. Dina expressed concern that the foster parents were alienating Nicole from her. Dina contended that permitting the foster parents to intervene would result in the practice of "parent picking." Dina insisted the motion would engender a custody battle, rather than working toward the stated goal of returning Nicole to her mother's home.

¶ 33 On March 26, 2010, the circuit court granted the foster parents' motion to intervene, concluding "it is in the best interest of the minor."

¶ 34 The circuit court conducted a hearing on April 5, 2010, regarding "the creation of some kind of protective order relating to the foster parent[s] participation in the case as parties."

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During the hearing, counsel for Dina requested that Dina be granted weekly visitation.

¶ 35 Nicole's LSSI caseworker since October 2009, Stephanie Franzen, was called to testify regarding progress in family therapy. On direct examination by the Public Guardian, Franzen opined that Dina's refusal to participate in the creation of treatment plans and goals ran counter to renewing family therapy with Nicole. She urged that Dina, based on a diagnosis of being bipolar, was in need of individual therapy. According to Franzen, Nicole received weekly or biweekly individual therapy since March 2009. Franzen recommended therapist-supervised bimonthly visits between Dina and Nicole. She also recommended that family therapy be halted given Dina's non-participation.

¶ 36 Cross-examination by Dina's counsel elicited from Franzen that Nicole wanted to see her mother. According to Franzen, the reports completed by the therapists showed that Nicole was bonded to her mother. Franzen acknowledged that between January 8, 2010, and February 25, 2010, Dina did not have weekly therapy because LSSI was reassigning its therapists.

¶ 37 Cross-examination by DCFS brought out that after a February 17, 2010, family therapy session with Dina, Nicole expressed suicidal ideation. According to Franzen, Nicole was diagnosed with depression, but was not prescribed medication.

¶ 38 At the conclusion of the hearing, the circuit court directed LSSI to implement family therapy and parent-child visits at its discretion and to conduct monthly meetings with the therapeutic service providers. The court entered conditions in a protective order for the foster parents.

¶ 39 On April 16, 2010, the circuit court judge met privately with Nicole in her chambers with

the agreement of the parties. The judge summarized her conversation with Nicole during the permanency planning hearing the following week. The circuit court judge noted Nicole "is an articulate and, in some respects, reasonably self-confident young person who is able to deal very well with what she [perceives] to be her mother's mental illness." Nicole "seems to be quite resilient." The judge found the reports prepared by the therapists accurately described what Nicole was thinking: "If her mother were well enough, she would like to be with her mother, but she doesn't think her mother is well enough, and she doesn't know when her mother could be well enough." Nicole unquestionably cares about her mother, but it is her mother's mental illness that negatively affects Nicole. The judge concluded that "Nicole would like to maintain a relationship with her mother, but feels her mother is not capable of caring for her now and does not feel that her mother is likely to be capable of caring for her in the foreseeable future." Nicole indicated that she would like to stay with her foster family.

¶ 40 At the permanency hearing on April 21, 2010, Franzen testified a goal of guardianship was in Nicole's best interest. The recommendation of guardianship was based upon Dina not making substantial progress for return home to occur. Franzen represented that Nicole's father agreed with the goal of guardianship.

¶ 41 Emily Burchfield, Dina's therapist, testified she met with Dina for seven appointments between February 2010 and April 2010. Dina did not miss any of her appointments. Dina and Burchfield agreed to monitor Dina's bipolar disorder with the aim of decreasing her grandiose statements and becoming more realistic. Dina signed a revised treatment plan on April 7, 2010,

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following a meeting with LSSI and other therapy professionals on April 7, 2010. Burchfield testified Dina exhibited signs of narcissistic and histrionic personality disorder. According to Burchfield, personality disorders are difficult to treat, but their features can be lessened dramatically. While it is possible that therapy can improve someone with a narcissistic personality disorder enough to care for and protect a child, it would take years of intensive therapy to accomplish that objective. Dina expressed to Burchfield her willingness to continue therapy.

¶ 42 William testified he is an attorney working in the film distribution industry. He stated he provides monetary support to Nicole by paying "the larger third-party bills," which include her tuition at the University of Chicago Laboratory School and medical costs. Since August 2009, William had between 10 and 15 unsupervised visits with Nicole. Prior to the initiation of this case, William had no direct relationship with Nicole and contributed child support. William testified he believed the best outcome for Nicole "is for her to stay with Liz and Tom and their two daughters until she's 18." William described Liz and Tom as "a stable, nuclear family." William testified that if guardianship were granted as a result of the permanency hearing, he would be willing to pay for Nicole's therapy and expenses going forward.

¶ 43 On April 21, 2010, the circuit court ruled the appropriate permanency goal is "return home within 12 months." Twelve months were necessary because "[n]either parent has made substantial progress towards return home. The natural mother needs to continue with her individual therapy and therapeutic services." The court noted that "Nicole is stable in her current placement."

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¶ 44 On July 8, 2010, the circuit court heard a progress report and entered an order allowing modified unsupervised day visits between Dina and Nicole, with the visits to begin at the discretion of the agency based on current information. The foster parents would be close by and available during the unsupervised visits. The order provided that Nicole could terminate the visits and the visits could "be suspended following a conference with the caseworker and foster parents if [the] visits are no longer in Nicole's best interest."

¶ 45 The circuit court judge met separately with the attorneys during the hearing. The judge noted that LSSI submitted a report recommending a change of goal from return home to guardianship. The judge "want[ed] to emphasize, at least at this point, the goal is return home. And they need to be working on return home." The judge, stressing the case was at a critical juncture, stated, "I need to be sure that [Dina] feels that the agency is giving it a fair shot."

¶ 46 In a therapy progress report dated October 11, 2010, Nicole's therapist, Helen LoRusso indicated that Nicole had a "break through session where she began to give a more emotionally honest accounting of her life before foster care." LoRusso "has seen a definite change in Nicole [in] sessions during this reporting period in that she has been more open and willing to disclose her feelings about her past." Nonetheless, Nicole continued to blame herself for being in foster care, feeling that if she had never run away, the police and DCFS would not be involved with her family. LoRusso reported a decline in Nicole's symptoms of depression and anxiety, but that Nicole remained uncertain about her permanency status. "In recent sessions, Nicole has stated that she still has hope that her mother will progress in therapy to the point that she will be able to be reunited with her." When LoRusso asked Nicole "how she would feel if the goal was changed

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[to guardianship] at Juvenile Court she remarked that she would probably be very depressed," but then added that she "would get over it." LoRusso agreed with LSSI's recommendation that the goal in this case should be changed to substitute care pending guardianship.

¶ 47 Another permanency planning hearing was held on October 14, 2010. At the hearing, Franzen testified that Dina was engaged in family, individual and psychiatric therapy with medication monitoring. Franzen opined that Dina needed ongoing parenting classes. According to Franzen, Dina's therapist reported that while Dina was attending sessions, "minimal to no progress is being made." Once again, Franzen recommended the goal of guardianship was in Nicole's best interest because of Dina's lack of progress in therapy. Franzen acknowledged that a change of goal would stop Dina's therapy.

¶ 48 At the conclusion of the hearing, the parties presented oral argument on the issue of the permanency goal. The Public Guardian recommended maintaining a goal of return home within 12 months. The State agreed with the Public Guardian's position. Counsel for Dina likewise argued that the goal of return home should remain unchanged. Counsel for William stated that guardianship was the best option. The foster parents took no position on the issue.

¶ 49 The circuit court entered a permanency order with a permanency goal of return home within 12 months as in the best interest of Nicole. The court recognized that Dina had "made only some progress" in therapy. The next permanency hearing was set for February 4, 2011.

¶ 50 Final Permanency Hearing

¶ 51 On February 4, 2011, the circuit court first addressed Dina's motion to produce Nicole at the hearing pursuant to Illinois Supreme Court Rule 237(b) (Ill. S. Ct. R. 237(b) (eff. July 1,

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2005)). LoRusso testified it would be in Nicole's best interest to have therapy professionals testify regarding her progress, though Nicole chose to be present during the hearing. The court agreed with LoRusso and denied the rule 237(b) motion.

¶ 52 Regarding the permanency goal, Franzen again recommended guardianship, explaining that Dina received treatment services for almost one year and had made only minimal progress. Franzen pointed out that the case had been open for more than two years and questioned the length of time it would take for Dina to adequately address her mental health issues. Nicole had bimonthly unsupervised visits with Dina on weekends. Some visits took place at Dina's home. Nicole continued to receive individual and family therapy. Franzen recommended that Dina continue psychiatric services with medication monitoring, individual therapy and family therapy. Because Dina completed the parenting classes, Franzen did not recommend further parenting classes.

¶ 53 Franzen stated that, although Nicole's relationship with her biological parents greatly improved since the opening of the case, Dina remained in need of additional therapy to address her mental illness. According to Franzen, Nicole is very comfortable with her placement and her needs are being met. Franzen noted that visitation between Dina and Nicole would not change if the goal were changed to guardianship. Franzen related the foster parents were open to the idea of Nicole continuing to develop her relationship with her biological parents. Franzen stated the agency would explore whether it could pay for continued individual therapy for Dina in the event of a goal change.

¶ 54 Jill Brantz, the family therapist, testified that she began meeting weekly with Dina and

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Nicole in August 2010. Brantz testified the progress in family therapy was negligible because Dina continued to present with symptoms of personality disorder with narcissistic and histrionic features that prevented her from making meaningful progress. Brantz defined "meaningful progress" as the ability of Dina to acknowledge her symptomatology and accept responsibility for her actions and the impact her action have had on her daughter. Dina needed to demonstrate an ability to understand and empathize with her daughter's needs. According to Brantz, Nicole has "done an excellent job of holding firm to her own beliefs and her own perspectives in session." Nicole told Brantz that she was not benefitting from family therapy. Brantz concluded the visits between Dina and Nicole had improved only because Nicole had the ability to structure and control them. Dina and Nicole were able to manage their relationship because the relationship remained at a superficial level.

¶ 55 Brantz recommended only four more family therapy sessions for Dina and Nicole because

Nicole was not benefitting. "[U]ntil such a time as [Dina] has been able to significantly make progress toward reducing her symptomatology, neither she nor Nicole will benefit from family therapy. And that's the process that's likely to take years." Brantz believed Nicole would continue to benefit from individual therapy.

¶ 56 Brantz recommended that the permanency goal change to guardianship because Dina was incapable of providing day-to-day and long-term care for Nicole. Brantz stated that it was in Nicole's best interest to have a definitive answer regarding where she would live for the

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remainder of her minority because the uncertainty of her status was very stressful.

¶ 57 LoRusso testified Nicole has received therapy from her for two years. When Nicole is focused on school, extracurricular activities and vacations, she is a typical, happy 12-year-old. LoRusso stated that when Nicole thinks about her future, she becomes anxious. LoRusso stated that Nicole feels responsible for her mother and fears that if the goal is changed, her mother will not receive the help she needs. According to LoRusso, Nicole wanted the goal to remain return home, but she wanted to stay with her foster parents. Nicole wanted to give her mother more time to improve, but believed the odds of her mother improving were "15 percent." When asked how a goal change would make her feel, Nicole told LoRusso that she "would feel very sad for a while," but then she "would get over it." According to LoRusso, Nicole was very happy with her placement and was thriving at school.

¶ 58 LoRusso recommended that it was in the best interest of Nicole to change the permanency goal to guardianship. She noted the strong attachment that Nicole has to the foster parents. LoRusso stated Nicole refers to her foster parents as mom and dad and she refers to Tom's daughters as her sisters.

¶ 59 Burchfield testified regarding Dina's individual therapy treatments. Dina's therapy had four goals: (1) demonstrate that she can provide a stable and secure home for Nicole; (2) decrease her grandiose statements; (3) accept responsibility for the events that placed Nicole in foster care; and (4) accept that her mood had to be monitored. Burchfield noted that Dina regularly attends her individual therapy sessions and was capable of meeting Nicole's basic

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needs, including providing shelter, food, and clothing. According to Burchfield, Dina was involved in a two-year relationship with Harvey S. She described the relationship between Dina and Harvey as stable and they lived together. Dina had expressed her belief to Burchfield that she did not have a personality disorder. According to Burchfield, Dina's progress "has been somewhat minimal." Nor did she know whether much more progress could be made in light of her personality disorder.

¶ 60 Harvey testified that Dina is his fiancée. He owns a car dealership in Chicago. Harvey stated that if Nicole were to come live with Dina, Nicole would become part of his family.

¶ 61 Dina testified that she was engaged in individual and family therapy. Dina sees her psychiatrist every one and one half months. She stated that she takes a minimal amount of the prescribed medication, a mood enhancer called "Abilify." In January 2011, Dina visited Nicole unsupervised on four occasions for three hours each visit. She testified that she took Nicole ice skating for her birthday and to the Art Institute. While they were at the Art Institute, according to Dina, Nicole said she had difficulty sleeping at night and often cries herself to sleep because she hopes to be with her mother. Dina testified that Nicole loved her and desperately wanted to be with her. Dina stated she loved her daughter and dedicated herself to having her daughter returned to her.

¶ 62 The circuit court began its ruling with the statement that it did not expect perfection from Dina or any other parent. However, the court expected to see substantial progress toward the goal of return home after three years, which did not occur. The court entered a permanency order changing the permanency goal from return home to private guardianship. The court

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reasoned that Dina "has not shown that she's corrected the conditions that brought Nicole into care and no substantial progress has been made towards reunification. The ten best interest factors support a goal of guardianship."

¶ 63 On March 29, 2011, the Public Guardian moved to vacate DCFS guardianship, terminate wardship, and close the case. In support, the Public Guardian noted Nicole has a strong attachment to Liz and Tom, which the foster parents reciprocate to Nicole. According to the Public Guardian, DCFS made every reasonable effort to reunite the family. Ultimately, return home was not possible because Dina never made the progress necessary for reunification. The Public Guardian noted adoption is not a permanency option because Nicole wished to maintain a relationship with both of her biological parents. A DCFS petition attached to the motion requested the circuit court appoint Liz and Tom as private guardians for Nicole.

¶ 64 Guardianship Hearing

¶ 65 Prior to the guardianship hearing on May 6, 2011, the circuit court denied Dina's motion to reconsider the change in permanency goal. The court also took judicial notice of the evidence presented at the hearings on April 5, 2010, April 21, 2010, July 8, 2010, October 14, 2010, and February 4, 2011.

¶ 66 Felicia Nolan-Robinson, an LSSI supervisor, testified that she was first assigned to this case in 2008. She testified regarding a report prepared by LSSI that was entered into evidence. The report included a recommendation to grant Liz and Tom private guardianship and to close the case. Nolan-Robinson testified that the foster parents were willing to take the responsibility of private guardianship of Nicole without a subsidy. Nicole currently is a student in the sixth

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grade at the University of Chicago Laboratory School. William pays the tuition. Nolan-Robinson stated Nicole is no longer receiving any therapeutic services, having met all of her treatment goals. LSSI discontinued family therapy between Dina and Nicole because progress was not being made. If Nicole required either individual or family therapy in the future, the foster parents would be able to implement and pay for the services without DCFS assistance. According to Nolan-Robinson, Dina visits Nicole on average every other week at Nicole's discretion. Future visits would be facilitated by the foster parents. LSSI had performed a background check on Harvey and approved him as someone who could be present at the visits between Dina and Nicole. Nolan-Robinson concluded it was in Nicole's best interest to appoint Liz and Tom as her private guardians. Nicole needed permanency and the foster parents have been able to meet all her needs.

¶ 67 Liz testified she was willing to become Nicole's guardian and was committed to caring for Nicole until she reaches adulthood. She would continue to facilitate visits between Nicole and her biological parents. In addition, Liz would secure therapeutic services for Nicole in the future should the need arise. She understood and accepted the rights of the biological parents to visit and to have contact with Nicole would survive the closing of the case. Liz agreed it is critical for Nicole to maintain a relationship with both of her biological parents.

¶ 68 Tom testified he was willing to become Nicole's guardian and was committed to caring for Nicole until she reaches adulthood. He stated he would continue to facilitate visits between Nicole and her biological parents and he would secure therapeutic services for Nicole in the future should the need arise.

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¶ 69 The parties stipulated to LoRusso's testimony. LoRusso's position had not changed since the previous permanency planning hearing. She would continue to recommend the appointment of private guardianship and case closure.

¶ 70 Dina presented the testimony of her individual therapist, Laura Duening. Duening testified she is employed as student intern at St. Francis Hospital's Comprehensive Mental Health Clinic. Since the end of February 2011, Dina attended nine therapy sessions with Duening. Dina told Duening her child had been taken away from her and she was trying to regain custody. Dina told Duening, "[T]here were mistakes made and that the child was not watched sufficiently." Duening is working to help Dina gain empathy for Nicole. She stated that though Dina has made slight progress, she appears motivated. Duening testified that Dina's conduct was consistent with her diagnosis of narcissistic personality disorder.

¶ 71 Dr. Fields testified on Dina's behalf. He received his doctorate of psychology in 1987. He had performed several evaluations of Dina in 2009. Dina recently requested another evaluation, which Dr. Fields conducted in March 2011. At the 2011 evaluation, Dr. Fields conducted a personality test that addressed a variety of elements. According to Dr. Fields, the results of the test showed low neuroticism scores and reflected "a very healthful response pattern overall." Dr. Fields did not conduct any other formal tests. Dr. Fields testified that Dina's plans to marry have been a stabilizing factor in her life. He was impressed by several "letters of conviction" written by Dina suggesting responsibility for what had occurred. In Dr. Fields' opinion, Dina's grandiose behavior has diminished. Dr. Fields acknowledged that, while Dina's behavior and attitude had improved, she continues to display symptoms of her narcissistic

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personality disorder. Dr. Fields conceded he could not provide an opinion on how well Dina would be able to care for Nicole while presenting symptoms of her personality disorder because he did not meet with Nicole. Dr. Fields opined Dina made enough progress to continue toward the goal of return home, but stated she is not ready for Nicole to return home today.

¶ 72 Harvey testified his marriage to Dina is scheduled for July 2011. Harvey stated he wanted to see more of Nicole and to have her reside at his home with Dina.

¶ 73 Dina testified she wanted Nicole to come home and live with her. She stated the most important element of parenting was to keep Nicole safe and secure. Dina stated Nicole regularly asks her for advice and Nicole confides in her. According to Dina, Nicole asked if she could stay overnight at the home Dina shares with Harvey. During their visits, Dina and Nicole go shopping, to the movies, to restaurants and for walks. According to Dina, Nicole is very unhappy about the change in permanency goal. Dina expressed remorse for her failure to keep Nicole safe and secure. She was willing to continue individual therapy and found the therapy helpful. Dina claimed that Brantz, the family therapist, had prejudged her ability to be a parent and wrongly dismissed the progress she had made. Dina would continue family therapy with a different therapist.

¶ 74 The circuit court found it was in Nicole's best interest to vacate the guardianship of DCFS, to appoint Liz and Tom as her private guardians, and to close the case. The court stressed the case had been in the court system for several years and that Dina "has not made substantial progress towards return home." The court concluded Dina did not have the capacity to parent Nicole. Discussing the statutory best interest factors, the court found Nicole would like

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to be home with Dina someday if Dina were well, but that this was more of a wish than a desire for the near future. The court found Nicole's day-to-day needs were being met by her foster parents. The court acknowledged Dina's life was more stable based on her relationship with Harvey, but the relationship itself did not show Dina was fit, willing, and able to care for Nicole. Based on the totality of the evidence, the court found Nicole's strongest connection is with the foster home and not with Dina.

¶ 75 On May 6, 2011, the circuit court entered an order granting the Public Guardian's motion to vacate DCFS guardianship, terminate wardship, and close the case. The court entered a separate private guardianship order appointing Liz and Tom as Nicole's guardians, which provided: "The private guardian shall permit reasonable visitation of the child by the natural parents, with a minimum of one visit a month. Visits shall be unsupervised unless the private guardian determines that the supervision is necessary for the safety or protection of the child." The order also provided that the court "retains jurisdiction of this case and of the parties hereto for purposes of modification and enforcement of this order." Dina timely appeals.

¶ 76 ANALYSIS

¶ 77 Dina submits the circuit court erred in granting private guardianship to Liz and Tom and closing the case. She asserts the decision was against the manifest weight of the evidence because she had unsupervised visits with Nicole and Nicole told her she wanted to return home. Dina also insists she was engaged in services, bonded with and desired custody of Nicole. Dina contends the evidence indicated she could effectively parent her child.

¶ 78 The Public Guardian and the State respond the circuit court's ruling was supported by the

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manifest weight of the evidence that it was in Nicole's best interest to appoint Liz and Tom as her private guardians and to close the case. According to the Public Guardian and the State, the evidence established that (1) Liz and Tom were suitable parents for Nicole, (2) Nicole wished to remain in her foster parents' home, and (3) Dina failed to make the progress necessary to justify extending the uncertainty of the return home goal.

¶ 79 The purpose of the Act is to serve the best interests of the children. 705 ILCS 405/1-2(1)

(West 2008); see also *In re Austin W.*, 214 Ill. 2d 31, 43 (2005) (the Act "is a statutory scheme created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor's safety and moral, emotional, mental and physical welfare, and the best interests of the community"). Whenever possible, the circuit court must make every attempt to return a child to the care and custody of the biological parent. 705 ILCS 405/1-2(1) (West 2008). Once a child is adjudicated neglected and remains in the custody of DCFS, the court must regularly conduct permanency hearings to determine the proper placement of the child. 705 ILCS 405/2-28(2), 2-28.1 (West 2008)). At the conclusion of a permanency hearing, the court must enter a written order setting forth a permanency placement goal for the child. 705 ILCS 405/2-28(3) (West 2008). The Act provides the court with wide discretion to select a permanency goal and to render a final decision to appoint an appropriate legal guardian. The court's determination will not be disturbed unless it is against the manifest weight of the evidence. 705 ILCS 405/2-27 (West 2008); *In re J.J. and T.R.*, 327 Ill. App. 3d 70, 77 (2001). A decision is against the manifest weight of the evidence, subject to reversal, if the

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facts clearly demonstrate that the court should have reached the opposite result. *In re N.B.*, 191 Ill. 2d 338, 346 (2000). The reviewing court does not reweigh the evidence or reassess the credibility of the witnesses. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000).

¶ 80

Best Interest Determination

¶ 81 In all guardianship cases, " 'the issue that singly must be decided is the best interest of the child.' " *In re Austin W.*, 214 Ill. 2d at 49 (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991)).

"A child's best interest is not part of an equation. It is not to be balanced against any other interest. In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors." *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991).

¶ 82 The Act directs the circuit court to consider certain factors, keeping in mind the child's age and developmental needs, for the best interest determination. The factors include:

"(a) the physical safety and welfare of the child, including food, shelter, health and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of

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being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705

ILCS 405/1-3(4.05) (West 2008).

¶ 83 In addition, the circuit court must consider " 'the nature and length of the child's relationship with the present care-taker' and the effect that a change of placement would have upon the emotional and psychological well-being of the child." *In re Austin W.*, 214 Ill. 2d at 50 (quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 534 (1991)). As our supreme court has observed, "Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child." *In re Austin W.*, 214 Ill. 2d at 50.

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¶ 84 Turning to the circuit court's determination in the instant case, Dina does not assert that the court failed to consider the statutory best interest factors. Instead, she contends that the court "gave insufficient emphasis to several factors that militate against the guardianship order." For example, Dina emphasizes that Nicole lived with her for the first 10 years of her life and formed a strong attachment and bond with her mother. Dina notes she did not pose a risk of physical harm to Nicole and she was able to provide Nicole with adequate shelter, food, clothing, medical care, and education. Dina insists her stable relationship with Harvey presents an appropriate living environment for Nicole. While we appreciate Dina's contentions, in effect, she asks that we reweigh the statutory factors to reach a conclusion opposite to that of the circuit court. This we cannot do.

¶ 85 The circuit court painstakingly monitored this case for more than three years while Dina strove to make progress in therapy. The court expressly considered the clear bond between Dina and Nicole. The court addressed at length each of the statutory best interest factors in its findings. The evidence presented during each of the permanency hearings indicated Dina's inability to progress and improve in therapy. The permanency hearing testimony consistently demonstrated that Dina would require years of therapy to achieve the necessary improvement to adequately care for Nicole. Dina's own witness, Dr. Fields, confirmed that Dina continued to present symptoms of narcissistic personality disorder. Though Dina had made progress consistent with maintaining the goal of return home, Dr. Fields could not provide an opinion regarding Dina's present-day ability to parent Nicole. Though Dr. Fields stated this was due to not having interviewed Nicole, Dr. Fields did state that Dina was not ready for Nicole to return

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home on the day he testified.

¶ 86 Dina was given every opportunity to make the progress necessary to maintain the return to home goal. The record of each of the permanency hearings conducted by the circuit court amply demonstrates this. We find no basis to reverse the circuit court's determination that, ultimately, Nicole's best interest of having permanency superceded granting Dina more time to make the necessary progress.

¶ 87 In Illinois, the impact of a biological parent's mental health on the minor receives great consideration when reviewing the permanency goal. *In re Faith B.*, 359 Ill. App. 3d 571, 573-74 (2005). In *In re Faith B.*, the circuit court found the respondent-mother's mental health problems compelled the grant of the minor's guardianship to two maternal aunts. *Id.* There, the evidence indicated that the respondent had "significant mental health problems that have led to erratic behavior, which at some times, has impacted directly on the minors." *Id.*, at 574. In addition, the respondent refused treatment and did not cooperate with DCFS personnel. Upon review, we held the circuit court's decision to appoint private guardians could not be seen as against the manifest weight of the evidence. *Id.*

¶ 88 Illinois courts also consider the biological parent's willingness to participate, make progress, and complete court-ordered therapy services when assessing the best interest of the minor in light of the permanency goal. Participation in services alone is not enough. *In re V.M. and M.M.*, 352 Ill. App. 3d 391, 398 (2004). The court in *In re V.M. and M.M.*, found the respondent-mother participated in the services required of her, yet she made insufficient progress to permit the return of two children to her custody. *Id.* Private guardianship was awarded to the

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children's grandparents. In assessing the best interest of the two children, the court emphasized the stability of the children's home environment while in the guardianship of the grandparents. Against the backdrop of the statutory factors, the decision to set a private guardianship goal, transfer guardianship to the foster parents, and close the case was not against the manifest weight of the evidence. *Id.*

¶ 89 In this case, taking into account the extensive record, it is clear that Dina's mental health problems caused her to behave erratically, which initially triggered DCFS' involvement in this case. Dina's desire to continue to seek therapy and stabilize her life are commendable, but the best interests of Nicole control the placement decision. *In re Austin W.*, 214 Ill. 2d at 50. Ultimately, Dina's inability to make sufficient progress in her therapy, would have extended the uncertainty of Nicole's status to the point of possible detriment to her. Nicole is entitled to a stable family life. The appointment of Liz and Tom as foster parents has benefitted Nicole greatly; she is firmly a part of her foster parents home, where her needs are met and she has thrived. Dina retains the right to have unsupervised visits with her daughter with a minimum of one visit per month.

¶ 90 Our review of the ample record in this case, makes clear the circuit court balanced the Nicole's best interest against the time Dina needed to make the progress necessary to achieve the return to home goal. In striking that balance, the circuit court concluded that Nicole's best interests would not be served by granting Dina still more time. Dina had not made sufficient progress, while Nicole, with the aid of the resources provided, matured into a confident, capable twelve-year old, whose future looks bright under the guidance of Liz and Tom as Nicole's private

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guardians.

¶ 91 The circuit court's decision to terminate DCFS guardianship, vacate wardship, and close the case is consistent with the manifest weight of the evidence. *In re Faith B.*, 359 Ill. App. 3d at 574; *In re V.M. and M.M.*, 352 Ill. App. 3d at 398. The appointment of private guardians necessarily followed in upholding the best interests of Nicole.

¶ 92

CONCLUSION

¶ 93 The circuit court's decision to vacate DCFS guardianship, terminate wardship, and close the case was consistent with the manifest weight of the evidence. The court's decision to appoint Liz and Tom as Nicole's private guardians was in the best interests of Nicole and consistent with the manifest weight of the evidence.

¶ 94 Affirmed.