

2011 IL App (1st) 111185-U

No. 1-11-1185

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

SIXTH DIVISION
September 19, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF L.J. and J.J.,)	
)	Appeal from the
Minors-Respondents-Appellees,)	Circuit Court of
)	Cook County
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Nos. 03 JA 00912
)	03 JA 00914
v.)	
)	Honorable
Tamikia T.-H.,)	Robert Balanoff,
)	Judge Presiding.
Respondent-Appellant).)	

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

ORDER

Held: The circuit court order transferring private guardianship was in the minors' best interests, and no abuse of discretion occurred in conducting the juvenile court proceeding.

1-11-1185

¶ 1 Twin brothers J.J. and L.J. were adjudicated wards of the court in 2005, and their mother, respondent Tamikia T.-H., was found unable and unwilling to parent them. In 2007, the circuit court placed the minors under private guardianship and closed their juvenile court cases. In 2011, the Department of Children and Family Services (DCFS) moved the circuit court to transfer the brothers' private guardianship based on the death of their guardian. After a hearing, the circuit court entered a new private guardianship order, transferring guardianship to the deceased's relatives. Respondent Tamikia T.-H. appeals.

¶ 2 On appeal, respondent contends the circuit court erred in transferring guardianship where her parental rights were not terminated and she objected to the transfer. She also argues the circuit court erroneously denied her request for a continuance and the right to speak at the hearing. In addition, she questions whether the circuit court judge had jurisdiction over the matter, whether every party received proper notice, and the accuracy of the record on appeal.

¶ 3 For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 **BACKGROUND**

¶ 5 Respondent was the mother of J.J. and L.J., who were born in March 1993. In June 2003, when J.J. and L.J. were 10 years old, the State filed a petition for adjudication of wardship, alleging that the brothers were abused and neglected where respondent admitted that she left the boys and their siblings home without adult supervision, the boys inappropriately touched their sister, and a sibling was hit by a car while traveling home from school on public transportation without adult supervision.

1-11-1185

¶ 6 In 2004, the circuit court found that J.J. and L.J. were neglected due to a lack of care and an injurious environment, and were abused due to a substantial risk of physical injury. In 2005, the circuit court adjudicated the brothers wards of the court, found respondent unable and unwilling to parent them, and appointed DCFS as their guardian with the right to place them. Their permanency goal became private guardianship in 2005, and visits between them and respondent were suspended in April 2007. In June 2007, the court granted private guardianship of J.J. and L.J. to Tawanna B. Respondent appealed, but the case was dismissed for want of prosecution.

¶ 7 On March 2, 2011, DCFS filed an emergency motion to transfer guardianship to Pearline D. and her adult son Tyrone D., who were Tawanna B.'s relatives and had cared for J.J. and L.J. since Tawanna B.'s death on May 31, 2010. DCFS alleged the brothers, who were now 17 years old, were doing well in the D. home and wished to remain there. Moreover, Ms. D. and Mr. D., who met the requirements to be appointed guardians, wished to be appointed the brothers' guardians. Furthermore, L.J. needed medication on an emergency basis and, thus, needed a guardian to consent to and secure the medication.

¶ 8 That same day, the circuit court reestablished wardship and appointed Ms. D. and Mr. D. as guardians on a temporary basis.

¶ 9 When the hearing on the emergency motion commenced on March 21, 2011, respondent objected that she was not ready to proceed and wanted 14 days to reply and prepare for her argument. DCFS responded that notices had been sent to respondent's last known address and, after she contacted DCFS about March 11, 2011, to her current address. DCFS asked the court

1-11-1185

to go forward with the hearing on the emergency motion because the guardianship was due to end in four days when the brothers turned 18, and a delay would irreparably harm them because their support payments would end. Respondent again objected, stating she had "other obligations," including "preparing things" for her federal court appeal. She stated that the former guardian died over a year ago, and argued that she had the rights to reply, prepare for argument, and have any petitions that had been filed. She also requested hearing transcripts. After hearing argument from the parties, the circuit court denied respondent's continuance request.

¶ 10 DCFS employee Nicole Churchill testified concerning the appropriateness of transferring the guardianship to Ms. D. and Mr. D. Churchill explained that when J.J. and L.J. turned 18, their subsidy payments would continue until they graduated from highschool in June 2011. The guardianship would continue for three months, then the subsidy payments would end. When respondent asked Churchill on cross-examination whether the court lacked jurisdiction to grant the motion, an objection was sustained, and respondent stated that she had no further questions.

¶ 11 J.J. and L.J. stated that they wanted their guardianship to transfer and they planned to attend college.

¶ 12 When respondent asked, the circuit court indicated that it did not need to hear any closing arguments. The trial court found that J.J. and L.J. were well-integrated into the D. family and it was in their best interests to transfer private guardianship so that their guardianship could continue for 3½ months. The court entered a private guardianship order that vacated the guardianship of Tawanna B. and appointed Ms. D. and Mr. D. guardians of J.J. and L.J. Respondent timely appealed.

¶ 13

ANALYSIS

¶ 14 The State's Attorney and Public Guardian argue that this court should strike respondent's brief and dismiss this appeal because her brief violates numerous supreme court rules governing appellate briefing. We recognize that a party's *pro se* status does not relieve her of her burden of complying with this court's rules. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Moreover, where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal. *In re Marriage of Gallagher*, 256 Ill. App. 3d 439, 442 (1993). Nevertheless, this court is not bound to enforce strict, technical compliance with the rules where, despite minor inadequacies in an appellate brief, the basis for an appeal is fairly clear. *Boeger v. Boeger*, 147 Ill. App. 3d 629, 630 (1986). Despite certain deficiencies in respondent's brief, the basis for her appeal is fairly clear, so we address her appeal on the merits.

¶ 15 The State's Attorney also argues that this court should dismiss respondent's appeal because it was rendered moot after J.J. and L.J. turned 18 years old. We disagree. According to section 2-23 of the Juvenile Court Act of 1987, the trial court has authority to order placement or custody for minors under 18 years of age found to be dependent, neglected or abused. 705 ILCS 405/2-23 (1) (West 2010). The circuit court's March 2011 order was entered before J.J. and L.J. turned 18 years old, respondent timely appealed to challenge that order, and this court has the authority to review the circuit court's ruling and the jurisdiction issues raised by respondent. Moreover, the Juvenile Court Act allows the court to continue the duration of wardship or reinstate wardship under certain circumstances after a minor's 18th birthday. See 705 ILCS

1-11-1185

405/2-31, 2-33 (West 2010).

¶ 16 On appeal, respondent contends the trial court erred in transferring guardianship to Ms. D. and Mr. D. because respondent's parental rights were not terminated and she had objected to the appointment of a private guardian at the hearing on the petition.

¶ 17 The key issue to be decided in guardianship and custody cases is the best interest of the minor (*In re Terrell L.*, 368 Ill. App. 3d 1041, 1046 (2006)), and in custody proceedings, a child's best interest is superior to all other factors, including the interest of the biological parents (*In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991)). In order to be placed in private guardianship, the preponderance of the evidence must show that it is in a child's best interest to do so. *In re Austin W.*, 214 Ill. 2d 31, 51 (2005). A trial court's order finding that it is in a child's best interest to grant private guardianship will not be disturbed unless that finding is against the manifest weight of the evidence. *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008). A finding is against the manifest weight of the evidence if the opposite result is clearly evident. *Id.*

¶ 18 The circuit court's decision to transfer private guardianship to Ms. D. and Mr. D. was not against the manifest weight of the evidence. Although respondent's parental rights were not terminated, in January 2005, the circuit court found that she was unable and unwilling to parent J.J. and L.J. and they were adjudicated wards of the court. See *Austin W.*, 214 Ill. 2d at 50 (a parent's right to the care and custody of her child must yield to the best interests of the child in abuse and neglect cases). At the March 2011 hearing on the emergency motion to transfer guardianship, Churchill's testimony established that J.J. and L.J. had been living with the proposed guardians, who were relatives of the deceased guardian, for a year in the home of the

1-11-1185

late guardian. An investigation established that Ms. D. and Mr. D. were qualified as guardians and the D. home was appropriate for the brothers. Appointing Ms. D. and Mr. D. as guardians would enable DCFS to continue making subsidized guardianship payments to help support the brothers beyond the age of 18 and until their upcoming high school graduation. Moreover, the brothers wished to remain in their home and have Ms. D. and Mr. D. appointed as their guardians.

¶ 19 Next, respondent complains that the circuit court erred when it unreasonably denied her request for a continuance. We disagree. The decision to grant or deny a motion for continuance rests in the sound discretion of the juvenile court. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 882 (2010). The denial of a motion to continue is not grounds for reversal unless the moving party can show prejudice by the denial. *Tashika F.*, 333 Ill. App. 3d 165, 169 (2002).

¶ 20 Here, granting respondent's 14-day continuance request would have been contrary to the brothers' best interests. At the time respondent made the request, J.J. and L.J. would turn 18 years old in four more days, and the Juvenile Court Act does not grant the court authority to reinstate wardship where a child has turned 18 except under very limited circumstances. See 705 ILCS 405/2-33 (West 2010). Without a new guardian appointed for them, the brothers' subsidy payments would not have continued up to their graduation from high school. See *In re K.O.*, 336 Ill. App. 3d 98, 106 (2002) (affirming the denial of a motion for a continuance where the trial court properly focused on the best interest of the child). Moreover, respondent has not shown prejudice where she received timely notice of the proceedings and was present at the hearing.

1-11-1185

¶ 21 Respondent also argues the circuit court denied her the right to speak. The record, however, refutes that claim. According to the record, she was allowed to cross-examine the only witness at the hearing. Moreover, at the conclusion of the witness testimony, the court simply stated that it did not need to hear closing arguments before ruling on the emergency motion, and no other party was afforded the opportunity to make any closing argument. See *In re a Minor*, 205 Ill. App. 3d 480, 491 (1990) (trial judges have discretion to determine the best way to conduct juvenile proceedings).

¶ 22 Respondent questions whether the circuit court judge had jurisdiction to enter the March 2011 order transferring guardianship to Ms. D. and Mr. D. Respondent seems to argue that the same trial judge should preside at every hearing in a case even if the case spans many years. Jurisdiction, however, lies in the court itself, not in an individual judge. *People ex rel. Sandbach v. Weber*, 403 Ill. 331, 335 (1949); *State Bank of Clearing v. Fair Winds, Inc.*, 73 Ill. App. 3d 597, 599 (1979). Consequently, the particular circuit court judge here had the authority to enter the March 2011 guardianship order. To support her lack of jurisdiction argument, respondent cites a provision of the Juvenile Court Act that restricts a party's right to move to substitute a judge without cause if the judge is currently assigned to a proceeding involving the alleged abuse, neglect or dependency of the minor's sibling and that judge has already made a substantive ruling in that other proceeding. See 705 ILCS 405/1-5(7) (West 2010). However, section 1-5(7) of the Juvenile Court Act is not applicable here because there is no indication in the record that any party sought to exercise the right to a substitution of a judge without cause.

1-11-1185

¶ 23 Respondent also complains that she did not receive proper notice of the proceedings. The record, however, establishes that respondent received adequate notice of the March 21, 2011 hearing. According to the record, DCFS made two initial attempts to serve respondent with notice of its emergency motion at her last known address on South Green Street in Chicago, Illinois. After DCFS had some communication with the guardian of J.J. and L.J.'s sister, respondent contacted DCFS and provided her current address. DCFS then served respondent with notice of the motion at her current Calumet City address on March 11, 2011. The rules of the Circuit Court of Cook County provide that if notice of a motion is given by mail, the notice must be deposited in the mail on or before the fifth court day preceding the hearing on the motion. Cook Co. Cir. Ct. R. 2.1(c)(1) (July 1, 1976). Moreover, respondent appeared at the March 21, 2011 hearing on the motion and participated in the proceeding.

¶ 24 Finally, respondent questions whether the record on appeal was true, accurate and complete. However, as the appellant, respondent is responsible for submitting an adequate record on appeal. *In re J.D.*, 332 Ill. App. 3d 395, 401 (2002). Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). The record here is sufficient to demonstrate that respondent is not entitled to any relief.

¶ 25 CONCLUSION

¶ 26 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.

1-11-1185