

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).

NO. 4-10-1007

Order Filed 4/11/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

| | | |
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| In re: D.H., L.H., C.H., M.J., and |) | Appeal from |
| A.C., Minors, |) | Circuit Court of |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Champaign County |
| Petitioner-Appellee, |) | No. 08JA62 |
| v. |) | |
| CHRISTAL HOPKINS, |) | Honorable |
| Respondent-Appellant. |) | John R. Kennedy, |
| |) | Judge Presiding. |

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Appleton and Pope concurred in the judgment.

ORDER

Held: The Juvenile Court Act of 1987 permits the same counsel to represent both a minor and the guardian *ad litem* during proceedings to terminate parental rights and no conflict of interest occurred under the facts of this case to make such dual representation improper.

Respondent, Christal Hopkins, appeals the trial court's termination of her parental rights to her five children, D.H. (born April 15, 1994), M.J. (born March 26, 1997), L.H. (born June 13, 1998), A.C. (born October 31, 2000), and C.H. born (April 22, 2002). She argues reversible error occurred because the children were not appointed independent counsel and were, instead, represented by the same attorney who also represented the guardian *ad litem*. We affirm.

In September 2008, respondent and her children came to the attention of authorities following an incident of domestic

battery between respondent and her live-in boyfriend. On September 3, 2008, the State filed a petition for adjudication of neglect, alleging the children's environment was injurious to their welfare because they were exposed to domestic violence and substance abuse, and because their parents failed to correct the conditions that resulted in a prior adjudication of parental unfitness. (During the pendency of this case, the parental rights of each child's father was either surrendered or terminated. None of those respondent fathers are a party to this appeal and we discuss the issues only as they relate to respondent mother.)

On October 1, 2008, the trial court conducted the adjudicatory hearing. Respondent stipulated to count II of the State's petition, admitting her children were neglected because she exposed them to substance abuse. On December 13, 2008, the court entered a dispositional order, adjudicating the children neglected, making them wards of the court, removing custody and guardianship from respondent, and placing custody and guardianship of the children with the Illinois Department of Children and Family Services (DCFS).

On September 9, 2010, the State filed a motion seeking a finding of unfitness and termination of respondent's parental rights. It alleged respondent was an unfit parent because she failed to (1) make reasonable efforts to correct the conditions

that were the basis for her children's removal; (2) make reasonable progress toward the children's return within the initial 9-month period after the neglect adjudication; (3) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; and (4) make reasonable progress toward the children's return during any 9-month period after the neglect adjudication, specifically December 10, 2009 through September 10, 2010. The State further alleged termination of respondent's parental rights was in the children's best interests.

During the termination proceedings, the children, ages 16, 13, 12, 10, and 8, were represented by attorney John DeLamar. DeLamar also acted as counsel for the children's guardian *ad litem*, the court-appointed special advocate (CASA). On November 3, 2010, the trial court conducted a hearing on the fitness portion of termination proceedings. Ultimately, the court found respondent unfit based upon three of the State's four alleged grounds.

On December 8, 2010, the trial court conduct the best-interest hearing. During that hearing, the parties stipulated that, if called to testify, respondent's three oldest children would state they continued to have a bond with respondent and preferred that their goal remain to "return home." During his argument to the court, DeLamar reiterated that he agreed with the stipulation. However, he also stated that respecting the chil-

dren's wishes would likely deny them permanency. DeLamar recommended the court grant the State's motion to terminate respondent's parental rights. At the conclusion of the hearing, the court found termination was in the children's best interests. On December 9, 2010, the court entered its order, terminating respondent's parental rights.

This appeal followed.

On appeal, respondent does not challenge either the trial court's unfitness finding nor its best-interest determination. Rather, she maintains reversible error occurred because the children were not represented by independent counsel as required by the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-5(1) (West 2008)) and, instead, shared the same counsel as CASA, their guardian *ad litem*. Respondent also argues a conflict of interest existed because her children's desired outcome was different from the outcome recommended by DeLamar and CASA.

Minors who are the subject of proceedings under the Act have the right to be represented by counsel. 705 ILCS 405/1-5(1) (West 2008). The Act provides that "[n]o hearing on any petition or motion *** may be commenced unless the minor who is the subject of the proceeding is represented by counsel." 705 ILCS 405/1-5(1) (West 2008). However, the Act further states as follows:

"[I]f a guardian *ad litem* has been appointed

for the minor *** and the guardian *ad litem* is a licensed attorney at law of this State, or in the event that a court appointed special advocate has been appointed as guardian *ad litem* and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian *ad litem* determines to be in the best interest of the minor." 705 ILCS 405/1-5(1) (West 2008)).

Respondent fails to cite any language in the Act that requires counsel for a minor to be separate from that of the guardian *ad litem*. In fact, the plain language of section 1-5(1) refutes her position, providing that, in certain situations, it is appropriate for one attorney to fulfill the role of both counsel for the minor and counsel for the guardian *ad litem*. See *In re Austin M.*, 403 Ill. App. 3d 667, 684-85, 941 N.E.2d 903, 917 (2010) ("According to the Act, appointment of separate counsel is unnecessary when the trial court has already appointed a guardian *ad litem* who is also a licensed attorney ***.").

This court has previously rejected arguments similar to

those made by respondent. In *In re J.D.*, 351 Ill. App. 3d 917, 920, 815 N.E.2d 13, 15 (2004), we noted "[t]he roles of a guardian *ad litem* and minor's counsel are not inherently in conflict" and "[b]oth have 'essentially the same obligations to the minor and to society.' [Citation.]" We further stated as follows:

"In *In re K.M.B.*, 123 Ill. App. 3d 645, 647 *** 462 N.E.2d 1271, 1272 (1984), this court held the minor's right to counsel was not violated when an assistant public defender acting as her guardian *ad litem* recommended a disposition contrary to her wishes. The minor had been found to be delinquent and adjudicated a ward of the court but wanted to remain in her mother's home. *K.M.B.*, 123 Ill. App. 3d at 645-46, *** 462 N.E.2d at 1271. The guardian *ad litem* was aware of this desire and informed the court of it but recommended to the court that it was in the minor's best interest to be placed outside of the home. *K.M.B.*, 123 Ill. App. 3d at 648, *** 462 N.E.2d at 1273.

This court explained an attorney appointed by the court in a juvenile proceeding 'must not only protect the juvenile's legal

rights but he must also recognize and recommend a disposition in the juvenile's best interest, even when the juvenile himself does not recognize those interests.' *K.M.B.*, 123 Ill. App. 3d at 647, *** 462 N.E.2d at 1272-73.

'It is not always possible for a juvenile's counsel to carry out his unique responsibility to protect the juvenile's best interest without alienating the juvenile. A delinquent juvenile's wishes are often not in his best interest. Although the juvenile's counsel should consider the juvenile's wishes and inform the court of those wishes, the counsel has an obligation to protect the juvenile's best interest. If protecting a juvenile's best interest requires that the counsel make a recommendation contrary to the juvenile's wishes, then the counsel has * * * a "professional responsibility and obligation" to make that recommendation.' *K.M.B.*, 123 Ill. App. 3d at 648, *** 462 N.E.2d at 1273." *J.D.*, 351 Ill. App. 3d at 920, 815 N.E.2d at 15-16.

Here, DeLamar acted appropriately in his representation of the children even though he also represented the guardian *ad litem* and made a recommendation that was contrary to the children's wishes. Although DeLamar recommended termination of parental rights, he informed the court that the three oldest children expressed a desire to have their goal be to "return home" to respondent. The record supports the conclusion that DeLamar was acting in the children's best interests. In particular, we note the trial court found that each factor it considered favored termination except the factor concerning the children's sense of attachment. Respondent does not challenge the court's findings or argue that termination was not in her children's best interests. Even an attorney who was solely representing the children would not have been required to advocate against termination if termination was the outcome in the children's best interests.

Here, no conflict of interest existed in DeLamar's representation of both the children and the guardian *ad litem*. Under the circumstances presented, the Act did not require the appointment of independent counsel for the children.

For the reasons stated, we affirm the trial court's judgment.

Affirmed.

