

No. 1-12-1407

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF M.G., a minor.)	Appeal from the Circuit Court
)	of Cook County
(THE PEOPLE OF THE STATE OF ILLINOIS)	
)	
Petitioner-Appellee,)	
)	
v.)	07 JA 732
)	
DAWN H.,)	Honorable
)	Rena M. Van Tine,
Respondent-Appellant.))	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

ORDER

¶ 1 HELD: The trial court's decision to close the case and award custody of the minor to the natural father was not against the manifest weight of the evidence where the natural father demonstrated consistent improvement and progress in his parenting of the minor, the minor was stable, well-adjusted, and happy living with the father, the occurrence of four unusual incidents was not sufficient to cause concern to the caseworker or the father's therapist about the father's ability to care for the minor, and all parties except for the natural mother agreed that case closure was in the minor's best interest.

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¶ 2 Respondent Dawn H. is the natural mother of the minor M.G.¹ The minor was adjudicated a ward of the court in August 2008. Following a hearing in May 2012, the trial court held that permanency goal had been achieved and ordered the minor to be returned home to the care of her natural father, Gregory G. Upon motion by Gregory, the trial court entered an order that terminated wardship, terminated guardianship, closed the case, and entered legal custody of M.G. to Gregory. Dawn appeals, arguing that the trial court erred in finding that Gregory had proven by a preponderance of the evidence that it was in M.G.'s best interests to close the case.

¶ 3 On August 13, 2007, the State filed a petition for adjudication of wardship of M.G., alleging that M.G. was a neglected minor living in an environment "injurious to her welfare." On August 22, 2007, the court found that probable cause existed for the filing of the petition because the mental health issues of her mother and father placed M.G. at risk, that there was an immediate and urgent necessity to remove M.G. from the home, that reasonable efforts failed to eliminate the necessity to remove M.G. from the home, and that leaving M.G. in the home would be contrary to her health, safety, and welfare. The court gave temporary custody of M.G. to the Guardianship Administrator of the Illinois Department of Child and Family Services (DCFS), with authorization to place M.G.. Supervised visitation was ordered for both parents. The Cook County Public Guardian was appointed as M.G.'s guardian *ad litem* and attorney on September 6, 2007.

¶ 4 The court held an adjudicatory hearing on August 1, 2008. Doctor Pamela Vergara-

¹ The minor's name is spelled two different ways in the briefs and throughout the record. For simplicity, in the order we will refer to the minor as M.G.

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Rodriguez, an expert in internal medicine and psychiatry, testified that she provided psychiatric care for Dawn two separate times between the summer of 2004 and April 2006. Dawn was parenting M.G. throughout her treatment with Vergara-Rodriguez.

¶ 5 Vergara-Rodriguez observed that Dawn was having difficulty caring for M.G.. Specifically, Dawn told Vergara-Rodriguez she was having trouble getting M.G. to fall asleep. However, it eventually became apparent to Vergara-Rodriguez that Dawn was projecting her own issues on M.G.. Vergara-Rodriguez verified with Dawn's mother that M.G. did not have trouble sleeping when Dawn's mother cared for M.G., and Vergara-Rodriguez concluded that Dawn was the one having difficulty sleeping. Further, Vergara-Rodriguez thought that Dawn's sleeplessness could be the cause of M.G.'s symptoms of irritability and hyperactivity.

¶ 6 Vergara-Rodriguez also came to suspect that Dawn was having visual hallucinations. Dawn told Vergara-Rodriguez that the police were monitoring her and were outside of her house. Also, Dawn felt she was being followed when she took M.G. to the park. However, through conversations with Dawn's mother, Dawn's friend, and Dawn's social worker, Vergara-Rodriguez determined that Dawn's concerns of being monitored by the police and being followed to the park were "unfounded" and part of a paranoid delusion.

¶ 7 Vergara-Rodriguez observed that Dawn was doing "everything possible" to get M.G. the care she needed. However, Vergara-Rodriguez became concerned Dawn could no longer care for M.G. in a safe manner when Dawn described seeing cockroaches on M.G. near her vaginal and anal areas, which Dawn had to get off of M.G.. Vergara-Rodriguez believed Dawn was having visual hallucinations and that, furthermore, Dawn's inability to organize her thoughts was

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negatively impacting M.G.'s behavior. Vergara-Rodriguez determined, within a reasonable degree of psychiatric certainty, that Dawn required 24-hour a day supervision over her parenting of M.G. because "the psychosis could potentially be putting M.G. in harm's way."

¶ 8 After the hearing, the trial court entered an adjudication order on August 19, 2008, finding that M.G. was a neglected or abused dependent in that conduct toward M.G. created an injurious environment. Specifically, the court found that the "natural mother's mental illness that manifested itself while she cared for the minor exposed the minor to an unstable environment." The court also found that Gregory, M.G.'s father, had his own mental health issues that prevented him from being able to care for M.G..

¶ 9 On November 24, 2008, the trial court entered a dispositional order finding that reasonable efforts had been made to prevent or eliminate the need for removal of M.G. from her home, but that appropriate services aimed at family preservation and reunification had been unsuccessful. The court concluded it was in the best interest of M.G. to remove her from the custody of her parents. The temporary custody order was terminated and M.G. was placed in the custody and guardianship of a DCFS Guardianship Administrator with a right to place the minor. Neither Dawn nor Gregory appealed the 2008 adjudication or disposition orders.

¶ 10 On February 3, 2009, the court entered a permanency order finding that the goal was for M.G. to return home within 12 months. The court noted that the "parents are making efforts towards reunification."

¶ 11 Another permanency order was entered on September 17, 2009, with the same goal of M.G. being returned home within 12 months. No indication of progress was made but the court

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noted, "parents engaged in services, well-bonded with minor."

¶ 12 On March 2, 2010, the court held a permanency planning hearing. Crystal Dominguez, a case worker from Hephzibah Children's Association, testified that she had been the caseworker for M.G. since August 3, 2009. Dominguez explained M.G. was eight-years old at the time of the hearing and had been evaluated for an Individual Education Program (IEP) at her school. She was found to be autistic and have an "emotional disturbance." M.G. was placed in a self-contained classroom with a one-on-one aide and participated in occupational therapy, physical therapy, speech and language therapy, and meeting with a social worker. She was also going to individual therapy sessions twice a week. In February 2009, M.G. had a seizure, and she was on seizure medication as a result.

¶ 13 M.G. visited each parent separately. She visited Dawn every Wednesday and the first and third Thursday of each month, and Gregory every Tuesday and the first and third Saturday of each month. Neither parent demonstrated signs of inappropriate behavior during the visits.

¶ 14 Dominguez said that, at the time of the hearing, Dawn was enrolled in individual therapy, a domestic violence program and was seeing a psychiatrist. Dawn had made "limited" progress but had been successfully terminated from parent coaching. M.G. looked forward to visits with her mother, but was "a lot more on edge" with her mother because M.G. did not know how her mother would react with certain things.

¶ 15 Gregory attended weekly individual therapy sessions with Doctor Arturo Gudino since before Dominguez had been assigned to M.G.'s case and had been consistent in going to the sessions. Gregory was also going to parent coaching once or twice a week and was very

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receptive to what his parent coach told him. He had made a huge improvement in his parenting ability with M.G. and Dominguez observed a bond between Gregory and M.G.. M.G. looked forward to visits with her father and Dominguez believed it was in M.G.'s best interest to increase visits with him because he was willing to do anything for his child and had shown "numerous" strides in therapy and parent coaching.

¶ 16 On March 16, 2010, the court entered a permanency order with a goal of returning M.G. home within 12 months. In the order, the court noted that Gregory had made substantial progress toward the return home of M.G. while Dawn had not made substantial progress.

¶ 17 On October 8, 2010, the trial granted Gregory unsupervised day and overnight visits with M.G.. A permanency order was entered the same day in which the court found that Gregory had made substantial progress toward the ultimate permanency goal while Dawn had not made substantial progress. The goal was to return M.G. home within 12 months. The court noted that Gregory was "completely engaged in services" and well-bonded with M.G..

¶ 18 On April 27, 2011, Gregory filed a motion to return M.G. to his care and custody. In it, he noted that he had been having unsupervised day visits with M.G. since March 2010 and unsupervised overnight visits since October 2010. He alleged that he and M.G. were "extremely bonded and ready for reunification."

¶ 19 On May 2, 2011, the court held another permanency hearing and a hearing on Gregory's motion. Delilah Butler, a caseworker from Hephzibah, testified that she had been the caseworker for M.G. since January 3, 2011. Butler explained that M.G. had been diagnosed with Asperger's syndrome and had special needs but said that Gregory had been able to address her special needs.

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¶ 20 When Butler took the case, Gregory was in family therapy with M.G., individual therapy, and had been successfully discharged from parent coaching and parenting classes. Dr. Gudino was the therapist for both the family therapy and Gregory's individual therapy sessions. Gudino told Butler that Gregory was making great progress in therapy and Gudino supported M.G.'s return home to Gregory. Gregory and M.G. began going to family therapy in 2009 and had been consistently attending the biweekly sessions. Gregory's individual therapy sessions had been decreased from weekly to biweekly and, the week before the hearing, had successfully completed individual therapy. Gudino felt that Gregory was able to step up to be a father to M.G. and was in agreement with the return-home goal.

¶ 21 Gregory was living with his mother and aunt in Elmwood Park and the home was safe and appropriate for M.G.. Gregory had unsupervised visits with M.G. from Friday through Monday morning, including overnight. He also visited with M.G. every Tuesday for two hours and saw her every other Thursday for family therapy. Butler testified that the visits were good, safe, and appropriate, and that M.G. and Gregory were bonded.

¶ 22 Butler also addressed three incidents that had occurred. The first incident occurred in January 2011. Gregory took M.G. to Target and let her go look at the candy by herself while he sat down. When Gregory was unable to find M.G. he asked the nearest security guard to help him. They found M.G. in the toy section, one aisle over from the candy section. Hephzibah was not concerned about the incident because they addressed it with Gregory. Butler believed Gregory understood that he needed to pay more attention to M.G. and felt that Gregory had taken appropriate steps by asking the security guard for help instead of panicking.

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¶ 23 The second incident also occurred in January 2011. Gregory accepted a ride from an unknown person while he was with M.G.. He explained that he had been at a gas station getting candy for M.G. when he missed the bus to meet M.G.'s foster parent. A woman at the gas station saw he had missed the bus and gave Gregory and M.G. a ride to the next bus stop two blocks away. Butler spoke to Gregory about the incident and making better choices. He said he knew it was not "right" to do so, but he did it anyway. Gregory promised he would not accept a ride from an unknown person again.

¶ 24 The third incident occurred in March 2011. Gregory gave M.G. half of her prescribed dosage of seizure medication because he was concerned about the medicine's long-term effects on M.G.. Gregory had been giving M.G. the medicine twice a day during their overnights since November 2010. Butler told Gregory that he was not an expert on making decisions regarding M.G.'s medication and told him to speak with M.G.'s doctor if he had concerns. Gregory agreed.

¶ 25 Butler explained that Gudino discussed all three incidents with Gregory and Gudino felt that Gregory understood the consequences of the incidents and would not do the same in the future. Gudino expressed no concerns about Gregory. He said Gregory just needed to learn to make better choices and would continue to make progress with family therapy.

¶ 26 Even in considering the incidents, Butler and Hephzibah supported the goal of M.G.'s return home to Gregory. Butler believed Gregory had made great progress and observed that he had a support system in place through his mother and aunt. Butler felt they would help Gregory make the right decisions. Gregory was very sorry about the incidents and Butler did not see any risk of harm to M.G. if she were to be returned home to Gregory. Butler said it was in M.G.'s

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best interest to be returned to Gregory because Gregory and M.G. have a "great relationship." M.G. enjoyed being with Gregory and told Butler, "I want to see him every weekend, and don't you say no." The State, the guardian *ad litem*, and M.G.'s foster parent, Betty Shaw, all agreed with the goal of returning M.G. home to Gregory.

¶ 27 Dawn objected to the return to Gregory. Dawn and M.G. had a good relationship, but her visits with M.G. had been decreased because Dawn was not attending individual therapy consistently. There was no recommendation to increase visits at the time of the hearing.

¶ 28 The trial court found that "given the father's substantial progress, the permanency goal at this time has been achieved." The court observed that Gregory has been thoroughly involved in services from the beginning of the case, and that the people who were working closely with him all recommended reunification. The court concluded that Gregory was fit, willing and able to care for, protect, train and care for M.G.. Additionally, the court did not believe the evidence of "three lapses of judgment" barred reunification because they had been addressed by the caseworker and the individual therapist. The court ordered that family therapy continue and that Dawn's weekly visits with M.G. would continue. The court returned the child home pursuant to an order of protection. In its written order, the court found that Dawn was unable to care for M.G.. The court set a progress report for September 13, 2011.

¶ 29 At the progress report hearing on September 13, 2011, Delilah Butler testified that M.G. was adjusting well to living with Gregory and was doing very well in school. M.G. also told Butler she liked living with Gregory. Her IEP was being followed by her current school and M.G. and Gregory continued to participate in family therapy with Gudino twice a week. When

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Butler spoke to Gudino in August 2011, he said he believed Gregory was making good progress and felt that Gregory could be successfully discharged from therapy at the end of October. Dawn still had supervised visits with M.G. once a week, although their visits had been interrupted for two-and-a-half months when Dawn required brain surgery.

¶ 30 Butler recommended that the order of protection be extended and M.G. remain at home with Gregory because M.G. had made progress and was adjusting well. The trial court continued the case to January 23, 2012.

¶ 31 On January 23, 2012, the court held another progress report. Delilah Butler testified that she was concerned about an incident that had occurred. On September 12, 2012, M.G.'s school had called the DCFS hotline because M.G. had reported that Gregory had left her alone in the park for between 45 minutes and an hour. When Butler discussed the incident with him, Gregory explained he was going to get lunch for himself and M.G. from McDonald's, but M.G. refused to ride her bike to McDonald's with him. M.G. had been scared and Butler was concerned for M.G.'s safety while she was alone. As a result, Gregory's therapy sessions had been increased from twice a month to once a week and Gregory was receiving individual and family therapy from Gudino. Gudino told Butler that Gregory was making progress and said that because Gregory was a new parent it was expected that Gregory would make future mistakes. Gudino was aware of the park incident but nonetheless felt M.G. was safe with Gregory.

¶ 32 Butler found Gregory's home to be appropriate and safe. M.G. was doing very well in school and her new school was following her IEP. M.G. had adjusted well to being returned home. In December 2011, she was taken off of her seizure medication.

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¶ 33 Dawn and M.G. continued to have weekly supervised visits but Hephzibah wanted to decrease Dawn's visits to twice a month because Butler thought weekly visits were becoming overwhelming for M.G..

¶ 34 Butler and Hephzibah were not yet ready to recommend case closure due to the park incident and because they had not yet reached a visitation plan for Dawn. However, Butler believed Gregory was still learning and now understood what it meant for M.G. to have special needs. Butler recommended that M.G. remain with Gregory because she did not think there was any risk of harm, abuse, or neglect to M.G. while she was in Gregory's care.

¶ 35 The trial court noted that Gudino was familiar with the whole history of the case and had fully addressed the park incident with Gregory. Further, the court observed that it was "not the best" judgment to leave M.G. by herself, but that Gregory was a new parent to a child with special needs and "these are things that normally come up during parenting a child." Overall, M.G. was thriving and doing well in school and appeared safe.

¶ 36 On January 24, 2012, Gregory filed a motion to close the case. The court heard Gregory's motion on May 14, 2012. At the hearing, Delilah Butler testified that she and her agency both recommended case closure and believed it was in M.G.'s best interest. Butler said M.G. was very stable at Gregory's home and doing very well both at home and in school. M.G. had received all A's on her last report card and her IEP was still being followed by her school.

¶ 37 Butler recommended that Gregory continue going to individual and family therapy with Gudino on an as-needed basis. No unusual incidents had occurred since the previous court date and Butler was not concerned about the previous incidents where Gregory had left M.G. alone,

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because he had made progress and she observed:

"[H]e is not going to be perfect. He's not going to be a hundred percent in parenting M.G.. This is something that's new for him especially on top of M.G.'s special needs that it's going to be something that as a parent, he might make a mistake. We have provided him with the necessary services that he needs to protect M.G., and all we can do is tell him what he needs to do and hope that he makes the best choice."

Based on her observations, Butler believed Gregory was making better parenting choices. Dawn and M.G. would continue to have supervised visits.

¶ 38 Gregory testified that Butler, other members of Hephzibah, and his therapist all spoke to him about leaving M.G. alone in the park. He understood it was completely inappropriate for him to ever leave M.G. alone. Gregory knew that he had to watch M.G. and be with her at all times. He would also fully cooperate so that M.G. could continue to see Dawn.

¶ 39 In closing, the guardian *ad litem* noted that Butler, Hephzibah, and Gudino were all professionals who had worked in their fields for several years and they all believed M.G. would be safe with Gregory and her placement there would be appropriate. The guardian *ad litem* felt that Gregory understood that he could not leave M.G. alone and she felt it was in M.G.'s best interest to close the case. The State agreed with the guardian *ad litem*.

¶ 40 In finding that the child had been successfully returned home to her father and it was in the best interest of M.G. to close the case, the court observed that "[t]here is no parent who is

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perfect to take care of a child. And I am not going to keep the case open for perfection to occur."

The court noted that Gregory had learned not to leave M.G. alone and in all other ways he had been caring very well for M.G. since her return to him. M.G. was in a stable home, doing well in school, and seemed happy. The court gave "great weight" to the opinion of service providers who had worked closest with Gregory and his family. The court also observed that M.G. would "also have regular contact with the mother who has been very, very vigilant with respect to the child and her safety as well."

¶ 41 The court entered a written order the same day, indicating its findings that the family was not in need of further monitoring by the court and that it was in the best interest of M.G. that the case be closed. The court also terminated the order of protection, terminated wardship and guardianship, closed the case, and awarded legal custody of M.G. to Gregory.

¶ 42 On appeal, Dawn's sole contention is that Gregory failed to show by a preponderance of the evidence that it was in M.G.'s best interest for the case to be closed. Specifically, Dawn emphasizes the four incidents detailed at the hearings on May 2, 2011, and January 23, 2012, and argues these incidents demonstrate that Gregory was not able to parent M.G. in a manner that would comport with M.G.'s physical safety and welfare, her sense of security and familiarity, or her status and well-being.

¶ 43 According to section 2-31(2) the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-2 *et seq.*) (West 2006):

"Whenever the court determines, and makes written factual findings, that health, safety and the best interests of the minor and

the public no longer require the wardship of the court, the court shall order the wardship terminated and all proceedings under this Act respecting that minor finally closed and discharged." 705 ILCS 405/2-31(2) (West 2006).

¶ 44 In closing a case, the trial court has full discretion to choose a permanency goal and render a final decision that the child's placement is in his or her best interest. *In re V.M. and M.M.*, 352 Ill. App. 3d 391, 397 (2004). Consideration of the child's best interests is superior to consideration of all other factors, including the interests of the natural mother and father. *V.M. and M.M.*, 352 Ill. App. 3d at 398. However, everything must be done to return the child to the care and custody of his or her natural parent whenever possible. *V.M. and M.M.*, 352 Ill. App. 3d at 397. A trial court's finding will not be disturbed unless it is against the manifest weight of the evidence. *V.M. and M.M.*, 352 Ill. App. 3d at 397; see also *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 51 (2008). A decision is considered to be against the manifest weight of the evidence if "the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *Tasha L.-I.*, 383 Ill. App. 3d at 52.

¶ 45 In determining the best interests of the child, the Act lists the following factors to be considered within the context of that child's developmental needs and age:

- "(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 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 2012).

The court may also consider the effect a change of placement would have on the child's emotional and psychological well-being and the nature and length of the child's relationship with

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the present care giver. *Tasha L.-I.*, 383 Ill. App. 3d at 52.

¶ 46 After Gregory filed his motion to close the case, the trial court complied with the Act by finding it was in the best interest of M.G. to close the case and return M.G. to Gregory, and that Gregory could care for M.G. without endangering M.G.'s health or safety. The court also entered written findings stating the same. Dawn nonetheless asserts that the trial court's best interest findings were against the manifest weight of the evidence.

¶ 47 Here, the trial court's decision was not against the manifest weight of the evidence. The testimony of Dominguez and Butler showed that Gregory had consistently progressed and improved in his parenting of M.G. from the beginning of the case. He attended all of the services that were assigned to him and successfully completed parent coaching and parenting classes. Gregory consistently went to his individual therapy sessions and to family therapy sessions with M.G.. Dr. Gudino, Gregory's therapist since 2009, did not waver in his assessments to Butler that M.G. was safe with Gregory and that Gregory would continue to learn and progress. M.G. had a good relationship with Gregory and liked living with him. M.G. was well-adjusted to her home life with Gregory and to her school. Butler also observed that Gregory's mother and aunt would be an additional support system at home.

¶ 48 Although Gregory used questionable judgment during four separate incidents between January 2011 and September 2011, both Butler and Gudino spoke to him about each incident and believed Gregory had learned from them. Butler and Gudino also both stated that no parent was going to be perfect and it was normal for Gregory to make mistakes. Furthermore, before case closure Gregory informed the court that he understood he was never to leave M.G. alone again

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and that he had to watch her and be with her at all times. We note that there were no further incidents after September 2011. In addition, although Gregory reduced M.G.'s seizure medication at one point in time, M.G. is no longer taking any medication.

¶ 49 The trial court was aware of the four incidents in closing the case. At the May 2011 hearing, the court recognized Gregory's "three lapses of judgment" but did not believe they barred reunification because they had been addressed. Even after the fourth incident occurred, the court recognized that Gregory was a new parent and that Gudino, who was familiar with the whole case history, had fully addressed the issue. In closing the case, the court recognized that no parent was perfect and that Gregory had learned he was not to leave M.G. alone. The court noted that M.G. was in a stable home, was doing well in school, and was happy, and that Gregory had additional home support from his mother and aunt. In its oral findings, the court specifically said it was giving "great weight" to the opinions of the service providers. Notably, Butler, Hephzibah, the guardian *ad litem*, and the State all recommended that the case be closed. Under these circumstances, the trial court's determination that closing the case and granting Gregory full custody of M.G. was in M.G.'s best interest was not against the manifest weight of the evidence.

¶ 50 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 51 Affirmed.