

No. 1-12-1949

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IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF:)	Appeal from the
)	Circuit Court of
MARICIA G.,)	Cook County.
)	
Minor/Respondent-Appellee/Cross-Appellant)	
)	
(The People of the State of Illinois,)	No. 05 JA 669
)	
Petitioner-Appellee,)	
)	
v.)	
)	
Latania T.,)	The Honorable
)	John L. Huff,
Mother/Respondent-Appellant/Cross-Appellee).)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: Neither biological mother's nor minor's due process rights were violated by what occurred during minor's best interest hearing, which resulted in termination of parental rights rather than private guardianship; and, biological mother's due process

rights were not violated as a matter of law pursuant to the Juvenile Court Act. Moreover, public guardian's cross-appeal seeking additional finding of unfitness pursuant to a different statutory ground is dismissed.

¶ 1 Respondent-appellant and cross-appellee Latania T. (respondent) appeals from the trial court's order in the instant cause terminating her parental rights over respondent-appellee and cross-appellant Maricia G., her minor child. She contends that both she and Maricia were denied due process during the best interest hearing due to the trial court's failure to consider private guardianship as an option for placement, and that she was denied due process during the same hearing as a matter of law. She asks that we restore her parental rights or, alternatively, that we vacate the termination order and remand for further proceedings.

¶ 2 The State and Maricia's public guardian have filed appellees' briefs. Maricia's public guardian has also filed a cross-appeal in this cause, contending that the trial court's failure to find respondent unfit pursuant to section 1(D)(b) of the Illinois Adoption Act (Adoption Act), in addition to section 1(D)(m), was against the manifest weight of the evidence. 750 ILCS 50/1(D)(b), (m) (West 2010). Thus, the public guardian asks that we reverse the trial court's finding in this regard and declare that respondent is also unfit pursuant to subsection (b), in addition to affirming the remainder of the court's decision.

¶ 3 For the following reasons, we affirm the trial court's termination order and we dismiss the cross-appeal.

¶ 4 **BACKGROUND**

¶ 5 We note at the outset that respondent does not challenge the trial court's finding of unfitness against her on appeal. Rather, she focuses solely on the circumstances surrounding the

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court's best interest determination. As such, while we will discuss some aspects of the unfitness hearing that took place, our focus, like hers, will center on the best interest hearing.

¶ 6 Maricia was born on December 9, 2003, to respondent and Bennie G., her putative father.¹ Respondent had two older sons, Kumidaze and Keevon.² The situation involving all three children was brought to the attention of the Department of Children and Family Services (DCFS) in October 2004, when it was discovered that they were living in respondent's trash-strewn, filthy apartment full of rotten food, oftentimes without an appropriate care plan; the older sons reported that respondent, who was addicted to cocaine, used drugs in front of the children and that she did not feed them everyday. In addition, Maricia had several open sores on her scalp. DCFS recommended services to respondent at that time, but she failed to engage in any of them.

¶ 7 Accordingly, a petition for adjudication of wardship and a motion for temporary custody were filed, wherein it was alleged that respondent had three prior reports of substantial risk of injury and environmental neglect, she was noncompliant with services, and she left the children with an inappropriate care plan. At the conclusion of a hearing, the trial court found that Maricia had been neglected due to a lack of necessary care and an injurious environment, and that she had been abused due to a substantial risk of injury. The court then found that respondent was unable and unwilling to care for Maricia and placed her in the guardianship of DCFS.

¹There has been no finding of paternity regarding Bennie G. He has been found unfit and is not a party to this appeal.

²While Kumidaze and Keevon were, and will herein be, referred to throughout Maricia's cause, they were not parties to it nor are they parties to this appeal.

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¶ 8 Following this, the court held a multitude of permanency planning hearings regarding Maricia. Initially, the goal was set at return home pending status; it was changed repeatedly from that to substitute care pending court determination on termination and back again as the cause continued. Respondent's progress was varied. For example, she entered an inpatient substance abuse treatment program in November 2005 and tested negative for drugs through mid-February 2006. However, she dropped out of the program without completing it. She later entered another inpatient treatment program and successfully completed it, as well as a parenting course. However, she then failed to attend recommended outpatient treatment and her whereabouts became unknown for several months between November 2006 and April 2007, when she apparently moved to Milwaukee. During this time, she did not visit or have any contact with either Maricia or the agency in charge of her care. Respondent contacted the agency in April and August 2007, claiming she was in Milwaukee in a substance abuse treatment program and receiving job training; however, this was never verified via the agencies in which she claimed she participated. Further, she tested positive for drugs twice during her time in Milwaukee, did not maintain consistent contact with the Maricia's care agency, and could not be located where she claimed she was staying.

¶ 9 Meanwhile, since the time Maricia was 18 months old, she began living with Stacey T., respondent's first cousin.

¶ 10 Respondent finally visited Maricia in April 2008 and presented documents to the court at a hearing indicating she engaged in services while in Milwaukee. Again, however, these could not be verified. By the latter part of 2008, respondent failed to attend several random urine

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drops, and the two she did submit tested positive for drugs. She also missed 7 of 16 scheduled visits with Maricia. Respondent again tested positive for drugs in February and March 2009. She reengaged in services, but her attendance was sparse.

¶ 11 In October 2009, respondent completed an intensive outpatient substance abuse treatment program, as well as some aftercare. From that point, her random drops were negative for drugs, she participated in a parenting course and anger management counseling, and she began consistent visits with Maricia. Eventually, respondent achieved reunification with her older sons.

The State continued to pursue its termination of parental rights petition regarding Maricia, citing, as the grounds for respondent's unfitness, her failure to make reasonable efforts to correct the conditions that were the basis of Maricia's removal (750 ILCS 50/1(D)(m)(i) (West 2010)), her failure to make reasonable progress toward reunification within nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West 2010)), and her failure to make reasonable progress toward reunification during several nine-month periods (750 ILCS 50/1(D)(m)(iii) (West 2010)), as well as a failure to maintain a reasonable degree of interest, concern or responsibility toward Maricia (750 ILCS 50/1(D)(b) (West 2010)). Following a hearing, the trial court found that the State had not met its burden of proving respondent unfit under subsections (b), (m)(i) or (m)(ii). However, the court did find that the State proved her unfitness pursuant to subsection (m)(iii) regarding two nine-month periods: March 16, 2007 to December 16, 2007, when respondent disappeared to Milwaukee and only contacted Maricia's care agency twice; and September 16, 2008 to June 16, 2009, when respondent suffered several drug relapses and failed to consistently participate in services. While the court congratulated respondent on overcoming her personal

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difficulties and on turning her life around, “[t]he fact remain[ed]” that she did not make sufficient progress as required under the statute for the periods cited.

¶ 12 Consequently, the cause proceeded to a best interest hearing to determine whether respondent’s parental rights should be terminated. Sheila Amber, Maricia’s care agency caseworker, testified regarding several aspects of Maricia’s life. Regarding her relationship with Stacey T., Maricia’s foster parent, Amber stated that Maricia, who is now almost 8 years old, has lived with Stacey T. since she was 18 months old. Maricia has her own bedroom and two dogs, which she takes care of with Stacey T. Amber visits Stacey T.’s home several times a month and has never found any sign of abuse or neglect; the home has always been safe and appropriate. Maricia calls Stacey T. “mommy,” is doing well academically in her private school, and participates in several extracurricular activities, such as choir, dance and Girl Scouts. Stacey T. also takes Maricia to church weekly. Amber noted that Maricia turns to Stacey T. for comfort and affection, as well as advice; they have become bonded over the years. When Amber asked Maricia where she wanted to live, Maricia told her she wanted to stay with Stacey T., her “real mom.”

¶ 13 Amber further testified regarding Maricia’s visits with her brothers and with respondent. Maricia has supervised visits with her older brothers twice a month. While these visits used to be in public venues, they are now conducted at respondent’s home. Maricia also sees her brothers at family functions and speaks to them via telephone. Stacey T. has invited them to participate in activities with Maricia. Amber averred that both individual and family therapy have been recommended for respondent and Maricia’s brothers, but they have missed several

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sessions and have not been successfully discharged. Regarding Maricia's visits with respondent, Amber noted that they have always been supervised, and that respondent has never obtained unsupervised or overnight visits with Maricia. Amber stated that there have been a few incidents during which respondent has gotten angry and raised her voice, frightening Maricia. Also, while respondent has been mostly consistent in her visits, she did miss one and arrived 35 minutes late for another, during which, when told the visit would still end on time, respondent became angry and swore in front of Maricia. Respondent was also invited to a skating party for Maricia's birthday, but did not attend. When Amber asked Maricia how she felt about respondent's absence at the party, Maricia told her she was not upset.

¶ 14 Ultimately, Amber testified that it was her and her agency's opinion that it is in Maricia's best interest to terminate respondent's parental rights. While Maricia understands she has two moms and that respondent loves her and she cares for respondent, and while Maricia wants to continue to see her brothers, Maricia has lived with Stacey T. almost all her life and is bonded to her; Maricia feels safe in her home. Moreover, while she and her colleagues discussed private guardianship, they felt that termination was the only option for Maricia's best interest, as this would give her long-term, permanent placement with Stacey T.

¶ 15 Jodi Taub, a psychotherapist, testified that she was assigned to be Maricia's therapist in December 2010 in order to assess her bond with Stacey T. and respondent and to ascertain Maricia's desires about where she wants to live. She met with Maricia several times and diagnosed her with adjustment disorder. Regarding Stacey T., Taub noted that Maricia has a healthy bond with her and considers her to be her mother; Stacey T. is Maricia's primary

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attachment. Maricia feels loved by Stacey T. and feels safe and secure in her home. Taub also noted that Maricia and Stacey T. display mutual affection for each other and that Maricia is a very secure child, which Taub stated originates from have a stable placement and connection in her life. Maricia told Taub she could not imagine not living with Stacey T.

¶ 16 Taub further testified that, conversely, Maricia indicated she feels nervous and uncomfortable at times with respondent, particularly when she raises her voice. Maricia described to Taub that during one visit, she left the room when respondent began to yell; her stomach began to hurt and she started crying. Taub averred that Maricia told her she feels pressured by respondent because she knows that respondent wants Maricia to live with her and buy her things. Maricia also described that she is afraid of respondent and is oftentimes anxious about her. While Maricia would like to continue to visit and have contact with respondent, Maricia is not attached to her; Maricia never told Taub that she feels loved by respondent. Taub also observed that Maricia at times reported stomach aches, fear, nightmares and trouble sleeping during periods before and after her dates of visitation with respondent, all of which Taub noted were symptoms of post traumatic stress. Specifically, Taub recounted one of her sessions with Maricia wherein Maricia described that respondent told Maricia she would buy her ice cream if Maricia would tell Taub and Amber that Stacey T. hit her (Maricia); Maricia has also said that respondent has told her not to speak to Taub during therapy. In addition, Taub averred that Maricia would become afraid and anxious that anything she said about respondent would get back to respondent and that respondent would be mad at her.

¶ 17 Regarding Maricia's wishes, Taub stated that Maricia told her she wants to continue

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living with Stacey T. Maricia also asked Taub to help her write down her feelings regarding her situation for the court so she would not have to testify in the presence of respondent; this note was admitted into evidence. Taub further testified that Maricia would suffer severe emotional and behavioral problems if her bond to Stacey T. were disrupted. Maricia is thriving and bonded to Stacey T. and is not bonded to respondent. Taub weighed the options of private guardianship versus adoption, and concluded that the former was not appropriate in Maricia's case because it would create a sense of instability and cause anxiety and stress in Maricia, as exhibited in prior circumstances, causing her to feel she could be removed from Stacey T. at any time. Ultimately, based on all this, as well as the length of time she has spent in Stacey T.'s care, Taub opined that it was in Maricia's best interest to terminate respondent's parental rights.

¶ 18 Stacey T. testified at the best interest hearing that she has been Maricia's foster mother since July 2005, when Maricia was 18 months old. She has enrolled Maricia in a private school, where she has flourished academically. Stacey T. has been very involved in Maricia's education and is a past president of the school's parent-teacher organization. She has also enrolled Maricia in various extracurricular activities, including dance, Girl Scouts and various church programs. Stacey T. averred that, while there have been some problems between her and respondent in the past, she does not intend to prevent respondent or Maricia's brothers from visiting or having contact with Maricia. Stacey T. facilitates Maricia's attendance at family functions where respondent is present and allows Maricia to contact respondent by telephone whenever she wishes. Stacey T. has told Maricia that she has two mothers. Stacey T. further testified that she and Maricia are closely bonded and that she wants to adopt Maricia.

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¶ 19 Finally, the note Maricia prepared, along with Taub, regarding her personal feelings about her placement was read into evidence, via stipulation. In her statement, Maricia averred that she calls Stacey T. “mommy.” While she understands that respondent is her biological mother, she wants to continue to live with Stacey T. She described that, ideally, she would like her brothers to come and live at Stacey T.’s home with her, and for respondent to live next door but not with her. Ultimately, she stated that she wants her family situation to stay the way it is currently.

¶ 20 At the conclusion of this hearing, the trial court issued its Memorandum Opinion and Order. In it, after describing the factors it is to consider, the court concluded that it was in Maricia’s best interest to terminate respondent’s parental rights. The court focused specifically on the nature and length of Maricia and Stacey T.’s relationship and the effect a change of placement would have on Maricia. The court did acknowledge that Maricia knows and loves respondent, as well as her brothers, and that she wants to maintain a relationship with them. And, in its colloquy, the court expressed how “proud” it was of respondent, how important she is in Maricia’s life, and how it hoped that, while “it is unfortunate that Illinois is not an open adoption state,” she and Stacey T. would work “together to raise” Maricia. However, the court made clear that rupturing the bond Maricia has developed with Stacey T. over the last seven years “would be a major, traumatic event in Maricia’s life,” and declared that the factors at issue “establish by at least a preponderance of the evidence that it is in Maricia’s best interest to terminate [respondent’s] parental rights.”

¶ 21 The trial court went on to specifically address respondent’s request to place Maricia in the private guardianship of Stacey T. rather than to terminate her parental rights. Citing section 2-

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27(1)(a-5) of the Juvenile Court Act (705 ILCS 405/2-27(1)(a-5) (West 2010)), the court noted that private guardianship “is available only if the options of return home and adoption have been ruled out.” The court explained that, because “Stacey T. wants to adopt Maricia[,] *** adoption cannot be ruled out” in Maricia’s case and, “[t]herefore, permanency should be achieved for Maricia by terminating the parental rights of [respondent].”

¶ 22

ANALYSIS

¶ 23 On appeal, respondent contends that she was denied due process during the best interest hearing both as a matter of law and pursuant to what occurred at the hearing. First, she asserts that, because the State, the public guardian and the trial court all mistakenly believed adoption could not be ruled out, they erroneously failed to consider the option of private guardianship, which would have preserved her parental rights. In addition, she asserts that this violated her due process rights as a matter of law because the statutory scheme involved mandates adoption when adoption is a possibility. Then, respondent goes on to claim that her, as well as Maricia's, due process rights were violated because the public guardian had a conflict of interest in this cause and because Taub did not interview respondent or other family members in assessing Maricia's case. We disagree with each of respondent's claims.

¶ 24 We begin with several threshold legal principles. Once a trial court finds a parent unfit pursuant to any one of the grounds of section 1(D) of the Adoption Act, the minor's cause proceeds to a hearing where the court is to determine whether it is in the best interest of the minor to terminate the parent's parental rights under the Juvenile Court Act (705 ILCS 405/1-3 (West 2010)). See *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). In this phase, the burden is

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upon the State to show that termination is proper based on a preponderance of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 261. There are several other options the court may consider when it comes to the minor's permanency, ranging from reunification with the parent, to some sort of transfer of guardianship or wardship to another person, to adoption. See 705 ILCS 405/1-1 *et seq.* (West 2010). Regardless, 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 31, 49 (2005) (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991) (this "is not part of an equation" but, rather, the main factor that "must remain inviolate and impregnable from all other factors")); see also *In re Violetta B.*, 210 Ill. App. 3d 521, 533 (1991). A child's best interest takes precedence over any other consideration, including the natural parents' right to custody. See *In re S.J.*, 364 Ill. App. 3d 432, 442 (2006) (the superior right of a parent to custody of his minor child is not absolute and must always yield to the minor's best interest); *In re J.L.*, 308 Ill. App. 3d 859, 864-65 (1999). Accordingly, it is not even necessary for a court to first find the minor's parents unfit or that they forfeited their custodial rights if a best interest determination shows that the minor should be placed with someone other than his parents. See *S.J.*, 364 Ill. App. 3d at 442; accord *In re M.M.*, 337 Ill. App. 3d 764, 779 (2003); *Violetta B.*, 210 Ill. App. 3d at 533.

¶ 25 In assessing a minor's best interest, the trial court is to look to all matters bearing on his welfare. See *Violetta B.*, 210 Ill. App. 3d at 534. These include several factors delineated in the Juvenile Court Act itself which take into consideration the minor's age and developmental needs, including:

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

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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 ***;

(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 2010).

See also *Austin W.*, 214 Ill. 2d at 49-50; *In re Desiree O.*, 381 Ill. App. 3d 854, 865-66 (2008).

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Additionally, the court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being. See *Austin W.*, 214 Ill. 2d at 50; *Desiree O.*, 381 Ill. App. 3d at 865-66; accord *J.L.*, 308 Ill. App. 3d at 865. The court's best interest determination not need contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision. See *In re Deandre D.*, 405 Ill. App. 3d 945, 955 (2010); accord *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004); *Jaron Z.*, 348 Ill. App. 3d at 263.

¶ 26 In addition, we note that sections 2-27(1)(a-5) and 2-28(2) of the Juvenile Court Act allow the permanent transfer of guardianship of a minor to a third party when other options for the minor's custody are not available. See 705 ILCS 405/2-27(1)(a-5); 2-28(2) (West 2010); see *In re Robert H.*, 353 Ill. App. 3d 316, 319-20 (2004). That is, in cases where the trial court has determined that a minor should not be returned home but at the same time that the parents' rights should not be terminated and adoption should not take place, private guardianship provides an appropriate alternative. See *Robert H.*, 353 Ill. App. 3d at 320-21.

¶ 27 Ultimately, the trial court's final determination regarding a minor's permanency lies within its sound discretion and that decision will not be overturned unless it is against the manifest weight of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 261-62. The court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent (see *In re Faith B.*, 359 Ill. App. 3d 571, 573 (2005)), and it abuses its discretion only when it acts arbitrarily without conscientious judgment (see *Connor v. Velinda C.*, 356 Ill. App.

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3d 315, 324 (2005)). There is a “strong and compelling presumption in favor of the result reached by the trial court” in child custody cases. *Connor*, 356 Ill. App. 3d at 323.

¶ 28 Turning to respondent's arguments on appeal, she asserts that her and Maricia's due process rights were violated because the court did not consider private guardianship as an option in Maricia's cause, and that her due process rights were violated as a matter of law because the Juvenile Court Act prevents consideration of this permanency option when adoption is a possibility, thereby rendering a parent's attempts at reunification irrelevant.

¶ 29 First, with specific respect to Maricia's case, we do not find that respondent's or Maricia's due process rights were violated by what occurred during the best interest hearing. Respondent insists that private guardianship was the least restrictive alternative here and that the existence of Stacey T. as a potential adoptive parent was only one factor the court was to consider.

Respondent is correct: private guardianship would have been the least restrictive permanency alternative for her (short of reunification) as her parental rights would not be terminated under that option, and the preference of the person caring for the minor is just one in a multitude of factors a court is to consider when determining a minor's best interest. However, even accepting respondent's assertions here, we cannot conclude, pursuant to our thorough examination of the record in the instant cause, that the trial court's decision to terminate her rights and make Maricia eligible for adoption by Stacey T., instead of ordering private guardianship to respondent, is against the manifest weight of the evidence. To the contrary, we agree with the trial court that it is in Maricia's best interest to be adopted by Stacey T.

¶ 30 The record is replete with evidence, from varying sources, that supports termination of

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respondent's parental rights. It is also replete with evidence that proves, contrary to respondent's insistence, that everyone involved in Maricia's cause, from the witnesses to the attorneys to the trial court, all considered private guardianship as an alternative permanent placement to Stacey T.'s adoption of Maricia. Based on the evidence presented, it simply was not a viable one.

¶ 31 For example, caseworker Amber testified that Maricia has been living with Stacey T. for almost seven years, during which time she has established an intense bond with her. Maricia calls Stacey T. "mommy," and Amber has consistently determined that Stacey T.'s home is safe and appropriate. Maricia turns to Stacey T. for comfort and affection and has a structured life: she has responsibilities at home, is doing well academically, and participates in various extracurricular activities. Critically, respondent has never obtained unsupervised or overnight visits with Maricia. While Maricia enjoys her visits with her brothers and cares for respondent, she has told Amber she wants to live with Stacey T., whom she refers to as her "real mom." Amber testified that, based on this, she and her agency believe it is in Maricia's best interest to terminate respondent's parental rights. Amber specifically testified that she and her colleagues discussed private guardianship, but they felt that termination was the only option for Maricia's best interest, as this would give her needed long-term, permanent placement.

¶ 32 Likewise, psychotherapist Taub testified that Maricia has a healthy bond with Stacey T., whom she considers to be her mother; Stacey T. is clearly Maricia's primary attachment and provides a stable placement and connection for her. This stability and connection, in turn, have made Maricia a very self-secure child. Taub noted that, in contrast, Maricia has the opposite feelings when it comes to her relationship with respondent. Maricia experiences several

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symptoms of post traumatic stress around respondent, such as anxiety, nervousness, stomach aches, nightmares and trouble sleeping. Maricia told Taub she is afraid of respondent and recounted several instance during which she felt pressured by her. Maricia also told Taub that she cannot imagine not living with Stacey T. Maricia would suffer severe emotional and behavior problems if her bond to Stacey T. were disrupted and she were returned to respondent, to whom she is not bonded. Taub specifically testified during the best interest hearing that she weighed the options of private guardianship versus adoption, but concluded that the former was not appropriate in Maricia's case. Taub explained that, not only would this option create a sense of instability and cause anxiety and stress in Maricia, it would cause her to feel she could be removed from Stacey T. at any time which, as exhibited throughout her relationship with respondent, has been a consistent problem for Maricia, who has suffered from no psychological issue other than her adjustment disorder.

¶ 33 In addition to these witnesses, the State and public guardian introduced several pieces of documentary evidence at the best interest hearing discussing the propriety of private guardianship as an alternative in Maricia's case, none of which concluded it was an option that should be considered. These included Taub's written reports, which actually recommended not only that Maricia be adopted by Stacey T., but also that she not have substantial contact with respondent. Similarly, the Cook County Juvenile Court Clinic conducted an evaluation at the request of the court to determine whether respondent should be allowed to have even unsupervised or overnight visits with Maricia. It concluded that such visits should not be ordered because it was "highly unlikely" that respondent would "be able to adequately care for, parent, and protect" Maricia.

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And, Maricia's own written statement expressed her clear desire not to live with respondent but, rather, to live with her "mommy," Stacey T.

¶ 34 Most critically here is the trial court's ruling from the best interest hearing. In direct contradiction to respondent's assertion on appeal, the court's Memorandum Opinion and Order not only demonstrates that it conducted a careful analysis of the statutory best interest factors, but it proves, undoubtedly, that it specifically and thoroughly considered private guardianship as a permanency alternative in Maricia's case. The court did not, as respondent insists, simply consider only Stacey T.'s ability and desire to adopt Maricia. See 705 ILCS 405/1-3(4.05)(j) (West 2010). Instead, it examined virtually all of the statutory factors pertinent to this situation, including Maricia's welfare and safety, her identity and ties, and her wishes. See, *e.g.*, 705 ILCS 405/1-3(4.05)(a-i) (West 2010). The court expressed that its two biggest concerns based on the evidence presented were the nature and length of Maricia and Stacey T.'s relationship and the effect a change of placement would have on Maricia, finding that rupturing the bond Maricia has developed with Stacey T. over the last seven years "would be a major, traumatic event in Maricia's life." In addition, the court directly addressed respondent's argument for private guardianship, explaining that, apart from its conclusion that it is in Maricia's best interest to terminate her rights pursuant to the statutory factors, it could not find this to be a viable alternative under section 2-27(1)(a-5) of the Juvenile Court Act since Stacey T. wants to adopt Maricia and, based on the circumstances presented, adoption could not be ruled out.

¶ 35 Therefore, in light of the record before us, we cannot agree with respondent that her and Maricia's due process rights were violated because the authorities involved in Maricia's case did

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not consider private guardianship as an option. Directly to the contrary, the record clearly demonstrates that the witnesses, the State, the public guardian and, most importantly, the trial court all reviewed the propriety of private guardianship. While respondent believes this was the least restrictive alternative for herself, all those involved in Maricia's case found that it was not the best alternative for Maricia. We find no reason to depart from this decision under the circumstances.

¶ 36 In a similar vein, respondent also argues that her due process rights were violated during ¶ 37 the best interest hearing, this time as a matter of law. Citing *Mathews v. Eldridge*, 424 U.S. 319 (1976), she asserts that she was denied the opportunity to be heard in a meaningful manner because, under section 2-27(1)(a-5) of the Juvenile Court Act, as long as adoption is not ruled out, private guardianship cannot be considered and this renders whatever a parent does in an attempt to achieve reunification irrelevant.

¶ 38 It is true that a parent has a due process right to the care, custody and control of her child. See *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003). Accordingly, in a termination case, a fundamental liberty interest belonging to the parent is involved and, thus, the proceedings must comply with due process requirements. See *In re Dar. C.*, 2011 IL 111083, ¶ 61; *Andrea F.*, 208 Ill. 2d at 165. Interestingly, however, the parent is not the only one with a fundamental liberty interest in a termination case. The child has such an interest in being in a loving, safe and stable home environment. See *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Thus, due process concerns surrounding the child must be considered at the same time. See *D.T.*, 212 Ill. 2d at 363.

¶ 39 In determining whether due process was complied with during a best interest hearing, our

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state supreme court has adopted the test developed in *Mathews*, cited by the parties to this appeal. See *Mathews*, 424 U.S. at 335. Three factors must be analyzed: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of this interest through the process used and the value, if any, of additional safeguards; and third, the government's interest, including the function involved and the financial and administrative burdens that additional procedural requirements would entail. See *D.T.*, 212 Ill. 2d at 362-63 (citing *Mathews*, 424 U.S. at 335).

¶ 40 Regarding the first factor of private interest, we have already pointed out that, while respondent does have an interest in the custody of her child, Maricia has an interest in living in a stable home. Unlike other interests that may compete in importance, these clearly do not. Critically, once respondent was found unfit, a finding which she has never challenged, the focus of Maricia's best interest became the single most important issue of this case. See *Austin W.*, 214 Ill. 2d at 49. Again, it is axiomatic that a child's best interest takes precedence over any other consideration, including the natural parent's right to custody—to the point that it is not even necessary for the court to find a parent unfit if it is determined that it is in the child's best interest to be placed with someone other than her parent. See *S.J.*, 364 Ill. App. 3d at 442 (2006) (the superior right of a parent to custody of his minor child is not absolute and must always yield to the child's best interest); accord *M.M.*, 337 Ill. App. 3d at 779. Therefore, while respondent asserts that her and Maricia's rights "are both important rights that require meaningful protection," the first *Mathews* factor, when applied to a termination case, is clearly more concerned with Maricia's due process rights. See *D.T.*, 212 Ill. 2d at 363-64.

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¶ 41 The second *Mathews* factor analyzes the risk of an erroneous deprivation of the interest at issue through the process used and the value, if any, of additional safeguards. Here, respondent claims that her rights were violated because the trial court did not consider private guardianship once it was established that adoption could not be ruled out. However, we have already discussed at length that Amber, Taub, the State, the public guardian and the trial court did, indeed, discuss the option of private guardianship and found that it was not in Maricia's best interest.

¶ 42 In addition, we note that respondent asserts that section 2-27(1)(a-5), as written, precludes a trial court from considering the likewise-permanent option of private guardianship when return home and adoption have not been ruled out, in contravention of the "stated goal of the Juvenile Court Act, which is to determine the best interest of the minor." We reject respondent's assertion and find that it has no merit. As noted, there is a governing statute here: section 2-27(1)(a-5). With this, our legislature has already spoken clearly regarding the applicability of different placement options for minors according to their circumstances, and has already established, via the Juvenile Court Act, a process regarding termination of parental rights along with implemented safeguards. The scope of a trial court's authority to terminate a parent's rights is strictly limited by the Juvenile Court Act, including section 27(1)(a-5). See *In re E.B.*, 231 Ill. 2d 459, 463 (2008). The court must proceed according to the pertinent sections of that statute and cannot, for any reason, operate outside of it. See *E.B.*, 231 Ill. 2d at 464 (court's authority in custody cases is "purely statutory" and it must follow the Juvenile Court Act's "strict procedural requirements" or else its rulings are void). Section 27(1)(a-5) makes clear that the placement

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option of private guardianship of a minor is only available "for children for whom the permanency goals of return home and adoption have been ruled out." 705 ILCS 405/2-27(1)(a-5) (West 2010). By framing the statute in this way, our legislature has established that the permanency goals of return home and adoption are "statutorily preferred" over private guardianship. *In re Jeffrey S. and Jawann P.*, 329 Ill. App. 3d 1096, 1103 (2002). In the instant cause, while return home to respondent was ruled out during the analysis of Maricia's best interest, adoption by Stacey T. was not. Accordingly, as part of the very procedural safeguards implemented by our legislature in the Juvenile Court Act, the trial court could not have awarded private guardianship to respondent under the circumstances. See, e.g., *Jeffrey S.*, 329 Ill. App. 3d at 1103 (trial court did not err in failing to order private or subsidized guardianship where both return home to father and adoption by foster mother could not be ruled out under section 2-27(1)(a-5), and, thus, termination of mother's parental rights was in minors' best interest).

¶ 43 Finally, the third *Mathews* factor focuses of the government's interest, including the burdens any additional procedural requirements would entail. Our courts have recognized that there are two governmental interests at play in a termination proceeding: the state's " 'parens patriae' interest in promoting the welfare of a child and the fiscal and administrative interest in reducing the cost and burden of such proceedings.' " *D.T.*, 212 Ill. 2d at 365 (quoting *Santosky v. Kramer*, 455 U.S. 745, 766 (1982)). Respondent asserts that added procedural safeguards that give a trial judge the "proper tools to ensure that the best interest of the minor is met" can be implemented in termination cases without additional expense, such as a "preliminary inquiry" conducted by the court regarding the "least restrictive means to achieve permanency" and an

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“evaluation from the [Cook County] Juvenile Court Clinic.” However, again, our legislature has already implemented the Juvenile Court Act, which has strictures for courts to conduct their analyses regarding permanency based on the least restrictive means to achieve it. In addition, termination cases are replete with evaluations from a variety of sources gathered throughout the entire process, all presented to the trial court in order to assist it in making its best interest determination. For example, in the instant case, there were some 90 exhibits admitted into evidence detailing Maricia’s life, safety concerns, psychological issues and desires; respondent’s past and present life; Stacey T.’s qualifications as an adoptive parent, and so many more pertinent topics. Interestingly, and in direct response to respondent’s claim here, among these were several attempts by the Cook County Juvenile Court Clinic to evaluate respondent. An evaluation was ordered in May 2008, but respondent consistently failed to attend the appointments. The evaluation was finally conducted in late December 2008, and, as we noted earlier, it concluded that respondent should not have even unsupervised visitation with Maricia.

¶ 44 Ultimately, based on our analysis of all three *Mathews* factors, we find nothing to suggest that the extra procedural requirements respondent mentions, in addition to those our system already has implemented, are necessary here. Rather, we conclude that due process was complied with during Maricia’s best interest hearing and, thus, that respondent’s rights were not violated as a matter of law.

¶ 45 Respondent’s next contention on appeal is that her and Maricia’s due process rights were violated during the best interest hearing in this cause because there was a “conflict of interest between the [public guardian] and [respondent]’s three children.” She claims that, because the

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public guardian advocated only for adoption and not private guardianship, he was not able to adequately advise Maricia. She also argues that, because Maricia's brothers were also represented by the public guardian's office, this created a conflict, as their legal rights to their sister were unduly severed. Again, we disagree with respondent's assertions, for several reasons.³

¶ 46 The duty of a public guardian in a termination case is to represent the best interest of the minor who is subject to the proceeding and to present recommendations to the trial court consistent with this duty. See *In re Gustavo H.*, 362 Ill. App. 3d 802, 810 (2005); see also *In re C.C.*, 2011 IL 111795, ¶ 48. In the instant cause, the only minor at issue was Maricia. Again, once respondent was found unfit, it was Maricia's, and only Maricia's, best interest that comprised the single most important determination here. We have already discussed at length that Maricia's best interest was followed, and we find no need to repeat ourselves here. Simply put, the record is clear that the public guardian fulfilled his duty pursuant to both the applicable law and particular circumstances of Maricia's case and there was no conflict of interest in the arguments for which he advocated at Maricia's best interest hearing.

¶ 47 In addition, while Maricia has two older brothers, they were not parties to her cause. Instead, as the record reflects, their causes were heard and decided completely separate and apart from Maricia's, as child custody law mandates. See *In re J.S.*, 2012 IL App (1st) 120615, ¶ 32 (every wardship case is *sui generis* and must be decided solely on its own particular facts); see

³We note for the record that during the procedural posture of Maricia's case, respondent, before the best interest hearing was conducted, filed a motion to remove the public guardian on the basis of a conflict of interest. The trial court denied this motion.

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also *In re G.L. and K.A.*, 329 Ill. App. 3d 18, 26 (2002) (identical wardship dispositions are not required among siblings in termination cases, since each child's best interest are to be examined independently in line with the child's own unique needs). While the public guardian's office may have represented Maricia's brothers in the past, the particular public guardian assigned to Maricia was clearly not representing them at the time of Maricia's best interest determination. Moreover, Maricia's brothers' situations, and whether they cared to maintain legal ties with Maricia, were wholly irrelevant considerations. While it is true that the existence of a minor-siblings relationship is important, the focus in a best interest analysis is its importance to the minor, not to the siblings. See 705 ILCS 405/1-3(4.05)(g) (West 2010) (one of the factors to consider is the minor's need for continuity of the relationship with her siblings). Also, we simply do not know from the record what Maricia's brothers felt about the legal ramifications of her custody.

¶ 48 Fortunately, in this case, the desires of the minor fell in line with the recommendations of her public guardian; Maricia wants to forever live with Stacey T., and the public guardian believed it was in her best interest to have a stable and permanent placement in Stacey T.'s home. Based on an incredibly thorough analysis of all the factors involved, the best option for Maricia was determined to be adoption. From our review of the record, we find nothing to support the conclusion that the public guardian here created or was part of any conflict of interest in this cause in violation of Maricia's or respondent's due process rights.

¶ 49 Respondent's final assertion that her and Maricia's due process rights were violated during the best interest hearing centers on the testimony of psychotherapist Taub. In a short paragraph

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in her brief on appeal, without any legal citation, respondent argues that, since Taub did not interview her or other family members, she and Maricia were denied "meaningful services" because "[t]he focus of [Taub's] testimony seemed to be how to terminate [respondent's] rights and not what was in the best interest of [Maricia]." Because of this, respondent insists that "additional procedural safeguards" are needed when therapists are allowed to testify. Again, we disagree.

¶ 50 Respondent neglects several facets of Taub's involvement in this cause. Taub is not a family therapist, nor was she contracted to be one for respondent's family in this case. Taub is a child therapist. As Taub testified, she was contracted for the purpose of conducting an initial assessment, which comprised assessing Maricia's relationship with Stacey T. and her relationship with respondent, and to find out from Maricia what her desires are regarding with whom she wanted to live. Taub obtained information regarding these purposes primarily from her sessions with Maricia. She testified that she also met with caseworker Amber to discuss the situation. Regarding Stacey T. and respondent, Taub obtained information mainly from discussing them with Maricia; she also observed Maricia with Stacey T. and with respondent when they all met in public. Taub spoke to Maricia's teachers, as well.

¶ 51 In the reports contained in the record on appeal, there is no mention of any of Maricia's relatives other than respondent and Stacey T. In addition to Maricia's father, whose parental rights were terminated immediately and without challenge, we have found only a brief mention of an aunt or aunts, but that is all. Clearly, then, respondent and Stacey T. are the only two family members critical to Maricia's life. Other than them, there was no other family member for

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Taub to interview. Moreover, Taub's testimony includes all the evidence she gathered, the methods she used to gather it and her explanation of her purpose for doing so. Ultimately, as with any case involving the credibility of witnesses, it was for the trial court to give the appropriate weight to Taub's testimony. See *Deandre D.*, 405 Ill. App. 3d at 952 (trial court is in best position to assess the credibility of witnesses testifying during permanency hearings).

Having reviewed the trial court's decisions herein, it is clear that the court felt Taub's testimony merited substantial weight. Without more from respondent, we find no reason to conclude that allowing Taub's testimony as a qualified child therapist at the best interest hearing--and one who treated the very minor at issue--violated respondent's or Maricia's due process rights.

¶ 52 In conclusion, and after thorough review of both the record in this cause and respondent's arguments on appeal, we do not find that her or Maricia's due process rights were violated in any way by what occurred at Maricia's best interest hearing, nor do we find that respondent's rights were violated as a matter of law in this case when she was not awarded private guardianship. To the contrary, we find that the trial court properly determined, pursuant to the legal standards and factors outlined herein, as well as the general principles of due process, that it was in Maricia's best interest to be adopted by Stacey T.

¶ 53 At this point, we are reminded that the minor's public guardian has filed a cross-appeal focusing on the unfitness hearing conducted in this cause. The public guardian contends that the trial court's failure to find respondent unfit pursuant to section 1(D)(b) of the Adoption Act, in addition to section 1(D)(m), was against the manifest weight of the evidence because there was "abundant evidence" to support the finding that respondent failed to maintain a reasonable degree

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of interest, concern or responsibility for Maricia. Again, the public guardian has asked that we reverse the trial court's finding in this regard and declare that respondent is also unfit pursuant to subsection (b). For her part, respondent insists that the public guardian's cross-appeal is moot. As she points out, she has not challenged the trial court's finding of her unfitness under section 1(D)(m)(iii) and, as such, there is no need to revisit the issue.

¶ 54 Both parties' arguments are well-taken. It is true that the grounds of parental unfitness under section 1(D) of the Adoption Act are independent of each other and, accordingly, we may examine multiple grounds in reviewing a finding of unfitness. See *Jaron Z.*, 348 Ill. App. 3d at 259. At the same time, a finding under any one of the grounds listed in section 1(D), standing alone, is sufficient to establish such unfitness (see *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005)) and, accordingly, once one ground is established and reaffirmed, we need not reexamine the cause to find unfitness under another, or multiple other, grounds.

¶ 55 The public guardian outlines several facts, which we have already discussed, that it feels support, by "abundant" clear and convincing evidence, that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to Maricia and her welfare. Chief among these is respondent's lengthy absence when she moved to Milwaukee and obtained drug abuse treatment, her relapse, and her sporadic visits with Maricia, all between 2006 and 2009. However, a finding of unfitness under subsection (b) is based on a subjective analysis and will not be declared unless the parent has shown complete indifference to and lack of concern for the child. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 591 (2004), *aff'd* 215 Ill. 2d 340 (2005). This ground does not focus on the parent's success but, rather, the reasonableness of her efforts and

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takes into account the parent's difficulties and circumstances. See *Jaron Z.*, 348 Ill. App. 3d at 259. Moreover, there is no time constraint which limits a court's consideration under (b); that is, a court may consider the parent's conduct in this respect *in toto* and is not forced to analyze only certain time periods of the parent's behavior. See *In re Dominique W.*, 347 Ill. App. 3d 557, 5670-68 (2004). Great deference is afforded to the trial court's determination with respect to a finding pursuant to subsection (b), and it will not be reversed unless it is against the manifest weight of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 259-60.

¶ 56 We acknowledge the litany of negative facts surrounding respondent, as highlighted by the public guardian, including respondent's refusal to consistently participate in services, her relapses, and her failure to maintain contact with Maricia. We, too, have recorded all these, and more, as exemplified by the text of our decision. However, as the trial court found, and as the record confirms, there are myriad positive facts here demonstrating that respondent has successfully overcome the initial negative aspects of her situation. This is particularly apparent once she was finally able to conquer her drug addiction. In addition to completing substance abuse treatment, she has engaged in counseling services, has become gainfully employed, and has even achieved reunification with her older sons. While this indeed took considerable time, and while respondent was undoubtedly absent for a lengthy period, we are not bound by a clock. Instead, respondent exerted, as the trial court described, "relentless" effort, all in an attempt to reunite with Maricia. Based on the evidence, we would find no reason to reverse the trial court's determination that respondent maintained a reasonable degree of interest, concern and responsibility for Maricia.

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¶ 57 Ultimately, however, we cannot ignore that respondent has never challenged her finding of unfitness which, as noted, was reached pursuant to section 1(D)(m)(iii) of the Adoption Act. We have already reviewed all the pertinent facts in this cause, and we have upheld the trial court's decision to terminate respondent's parental rights to Maricia—a critical decision that has permanent ramifications. Again, a finding under any one of the grounds listed in section 1(D), standing alone, is sufficient to establish such unfitness. See *Gwynne P.*, 215 Ill. 2d at 349. There is nothing more to be accomplished in this cause, so, ultimately, we need not reach this issue. Therefore, we choose not to address the public guardian's additional argument here and, instead, we dismiss the cross-appeal as moot.

¶ 58

CONCLUSION

¶ 59 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court finding the termination of respondent's parental rights to be in Maricia's best interest, and we dismiss the public guardian's cross-appeal regarding any further findings regarding respondent's unfitness.

¶ 60 Affirmed; cross-appeal dismissed.