

2013 IL App (2d) 121103-U
Nos. 2-12-1103 & 2-12-1104 cons.
Order filed March 22, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> SHARON LYNN T., a Minor,)	Appeal from the Circuit Court
	)	of Du Page County.
)	
	)	No. 09-JA-75
)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Sharon P.,	)	Anthony V. Coco,
Respondent-Appellant).	)	Judge, Presiding.

<i>In re</i> JOEY P., a Minor,	)	Appeal from the Circuit Court
	)	of Du Page County.
)	
	)	No. 09-JA-65
)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Sharon P.,	)	Anthony V. Coco,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Absence of hearing to determine respondent's fitness to stand trial did not violate respondent's due process rights; (2) trial court did not err in appointing a guardian *ad litem* for respondent where the court did so only after granting respondent's request for a psychological evaluation, receiving the mental examination report of

respondent, and hearing that respondent was in the psychiatric ward, and neither respondent nor her attorney objected to the appointment of the guardian *ad litem* respondent actively participated in the appointment of the guardian *ad litem*, and respondent did not demonstrate that any prejudice arose as a result of the appointment of the guardian *ad litem*; and (3) respondent failed to establish that guardian *ad litem* appointed on her behalf exceeded the scope of his representation.

¶ 2 Respondent, Sharon P., appeals from an order of the circuit court of Du Page County declaring her an unfit parent and terminating her parental rights to her children, Sharon Lynn T. and Joey P. On appeal, respondent does not challenge the grounds identified by the court for finding her unfit or the court's conclusion that it is in the minors' best interest that respondent's parental rights be terminated. Rather, she alleges that the trial court erred in failing to conduct a hearing to assess her fitness to stand trial. Respondent also challenges the appointment of a guardian *ad litem* (GAL) on her behalf. Finally, respondent maintains that, to the extent the trial court had the authority to appoint a GAL, the trial court improperly permitted the GAL "to go beyond a limited scope of representation." We are not persuaded by any of respondent's arguments and therefore affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the record on appeal. On June 17, 2008, respondent gave birth to a son, Joey P.¹ The Illinois Department of Children and Family Services (DCFS) took protective custody of Joey on June 27, 2008. On July 1, 2008, the State filed a petition for adjudication of wardship pursuant to section 2-13 of the Juvenile Court Act of 1987 (Juvenile Court

¹ Respondent originally identified Raul T. as the father of Joey. DNA tests later established that Raul was not Joey's biological father. Respondent subsequently named Patrick M. as a potential father. Patrick's parental rights were terminated as part of this proceeding, and he is not a party to this appeal.

Act) (705 ILCS 405/2-13 (West 2008)). Count I of the petition alleged that Joey was neglected due to an injurious environment (see 705 ILCS 405/2-3(1)(b) (West 2008)) in that (1) the minor “needs to be fed and his mother has indicated (on one occasion) that she believes the child may be fed through her heart” and (2) respondent “(on at least one occasion) was seen to be aggressive in her feeding of [Joey].” Count II of the petition alleged that Joey was dependent in that he is without proper care because respondent has mental disabilities which result in her inability to provide the proper care for the minor. 705 ILCS 405/2-4(1)(b) (West 2008). Following a temporary custody hearing, the trial court placed Joey in shelter care and awarded temporary custody of the minor to DCFS. Joey was placed with a foster home.

¶ 5 On December 16, 2008, the matter proceeded to an adjudicatory hearing on the State’s petition for adjudication of wardship. At that time, the State withdrew count I of the petition. Following the hearing, the trial court found Joey to be a dependent minor as alleged in count II of the State’s petition. See 705 ILCS 405/2-4(1)(b) (West 2008). On January 13, 2009, following a dispositional hearing, Joey was adjudged a ward of the court and placed in the guardianship and custody of DCFS with the right to place the minor.

¶ 6 Meanwhile, in March 2009, respondent reported that she was pregnant. On October 22, 2009, respondent was involuntarily admitted to a hospital after being found naked outside her home in the rain. At that time, the hospital reported that respondent was non-compliant with her medication, that she was “acutely psychotic,” and that she had “grandiose illusions.” On October

24, 2009, respondent gave birth to a daughter, Sharon Lynn T.² DCFS took protective custody of Sharon Lynn shortly after her birth.

¶ 7 On October 28, 2009, the State filed a petition for adjudication of wardship of Sharon Lynn pursuant to section 2-13 of the Juvenile Court Act (705 ILCS 405/2-13 (West 2008)). Count I of the petition alleged that Sharon Lynn was neglected in that her environment is injurious to her welfare because the minor needs to have all of her needs met by a responsible adult and respondent “has shown an inability to provide for her own needs and well-being as evidenced by her running outside naked *** before the baby was born and indicating that this was based on her college education and knowledge of the need to run away if one thinks one is having a heart attack.” 705 ILCS 405/2-3(1)(b) (West 2008). Count II of the petition alleged that Sharon Lynn was dependent in that she is without proper care because of respondent’s mental disabilities, which result in her inability to provide the proper care for the minor and the attention required of a newborn infant. 705 ILCS 405/2-4(1)(b) (West 2008). Following a temporary custody hearing, Sharon Lynn was placed in shelter care and temporary custody of the minor was granted to DCFS. Sharon Lynn was placed in the same foster home as Joey.

¶ 8 On March 9, 2010, respondent filed a request for a psychological evaluation before the adjudicatory hearing for Sharon Lynn. The trial court granted respondent’s motion and ordered respondent to contact Dr. John Murray for the evaluation. On July 19, 2010, Dr. Murray issued a report. Dr. Murray’s primary diagnosis was schizophrenia, paranoid type in partial remission. In

² Raul T. was identified as Sharon Lynn’s biological father. DNA tests confirmed this relationship. Ultimately, Raul voluntarily surrendered his parental rights to Sharon Lynn, and he is not a party to this appeal.

his report, Dr. Murray noted that respondent presented with “disorganization, impaired judgment, impulsivity and paranoid thought process, affecting her participation in parenting and reunification efforts.” As discussed more thoroughly in the analysis portion of this disposition the State subsequently moved for the appointment of a GAL on respondent’s behalf. The GAL assigned to the minors concurred with the State’s request. On September 28, 2010, the court appointed attorney Sean McCumber to serve as respondent’s GAL.

¶ 9 On December 15, 2010, an adjudicatory hearing commenced with respect to the neglect and dependency petition filed on behalf of Sharon Lynn. Ultimately, Sharon Lynn was found to be neglected and dependent as alleged in the State’s petition. On January 18, 2011, following a dispositional hearing, Sharon Lynn was adjudged a ward of the court and placed in the guardianship and custody of DCFS with the right to place the minor.

¶ 10 The initial permanency goals for the two minors was return home within 12 months. Services plans were developed to assist respondent in achieving this goal. However, the permanency goal for both minors was subsequently changed to substitute care pending court determination on termination of parental rights. On August 30, 2011, the GAL for the minors filed a petition to permanently terminate respondent’s parental rights with respect to Joey. Paragraph five of the petition alleged as follows:

“5. That the respondent mother *** is an unfit person as defined in 750 ILCS 50/1(d) for the following reasons:

a. She has failed to maintain a reasonable degree of interest, concern or responsibility as to the minor’s welfare [750 ILCS 50/1(D)(b) (West 2008)] *** in that she has failed to

comply with any request in any service plan devised by the Illinois Department of Children and Family Services; that service compliance was required to assure the safety of the minor.

b. She has deserted the child for more than three (3) months next preceding the commencement of these proceedings [750 ILCS 50/1(D)(c) (West 2008)] *** in that she has failed to comply with any request in any service plan devised by the Illinois Department of Children and Family Services; that service compliance was required to assure the safety of the minor before visits could be reinstated.

c. She has continuously engaged in substantial neglect of the minor [750 ILCS 50/1(D)(d) (West 2008)] *** in that she has failed to comply with any request in any service plan devised by the Illinois Department of Children and Family Services; that service compliance was required to assure the safety of the minor.

d. She has failed to protect the child from the conditions within her environment injurious to the minor's welfare [750 ILCS 50/1(D)(g) (West 2008)] *** in that she has failed to comply with any request in any service plan devised by the Illinois Department of Children and Family Services; that service compliance was required to assure the safety of the minor.

e. She has engaged in other neglect of, or misconduct toward the minor [750 ILCS 50/1(D)(h) (West 2008)] *** in that she has failed to comply with any request in any service plan devised by the Illinois Department of Children and Family Services; that service compliance was required to assure the safety of the minor.

f. She has failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from the parent, or to make reasonable progress toward the

return of the child to the parent within nine (9) months after an adjudication of neglected minor, abused minor or dependent minor under the Juvenile Court Act of 1987, or to make reasonable progress toward the return of the minor to the parent during any nine (9) month period after the end of the initial (9) month period following the adjudication of neglected minor, abused minor, or dependent minor under the Juvenile Court Act of 1987 [750 ILCS 50/1(D)(m) (West 2008)] *** in that the mother has consistently failed to make any progress or efforts toward return home of the minor during any period since adjudication of the minor.

g. She has evidenced her intent to forego her parental rights, whether or not the child is a ward of the court as manifested by her failure for a period of twelve (12) months:

i. To visit the child [750 ILCS 50/1(D)(n)(1)(i) (West 2008)] *** in that her refusal to comply with the Illinois Department of Children and Family Service case plan, and her inability to act appropriately towards the minor during visits resulted in visitation being denied to the mother.

ii. To communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order [750 ILCS 50/1(D)(n)(1)(ii) (West 2008)] *** in that the mother has refused to contact or cooperate with the Illinois Department of Children and Family Services since at least February 2009.

iii. To maintain contact with or plan for the future of the child although physically able to do so [750 ILCS 50/1(D)(n)(1)(iii) (West 2008)].

h. She, although physically and financially able, has engaged in repeated or continuous failure to provide the child with adequate food, clothing, and shelter [750 ILCS 50/1(D)(o) (West 2008)].”

The petition further alleged that it is in the best interests of the minor that respondent's parental rights be terminated. The petition with respect to Joey was later amended to specify three nine-month periods as to paragraph 5(f): (1) January 15, 2009, through November 15, 2009; (2) November 15, 2009, through September 15, 2010; and (3) September 15, 2010, through July 15, 2011.

¶ 11 On February 2, 2012, the State filed a petition to permanently terminate respondent's parental rights to Sharon Lynn. The petition alleged that respondent is an unfit person to parent the minor in that: (1) she has failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from her, or to make reasonable progress toward the return of the child to the parent within nine months after an adjudication of neglected, abused, or dependent minor (750 ILCS 50/1(D)(m) (West 2010)); and (2) she has shown an inability to discharge parental responsibilities based on mental impairment, mental illness or an intellectual disability as defined in section 1-116 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-116 (West 2008)) and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period (750 ILCS 50/1(D)(p) (West 2010)).

¶ 12 A hearing on the petitions to terminate respondent's parental rights commenced on June 28, 2012. At the beginning of the hearing, there was a discussion regarding McCumber's role as respondent's GAL. The court determined that McCumber would be allowed to ask questions of witnesses and offer his opinion as to the best interest of respondent. Thereafter, the unfitness phase of the hearing began.

¶ 13 The State's first witness was Joanna Nesbitt. Nesbitt testified that she was employed as a child welfare specialist for DCFS between February 2008 and February 2010. Nesbitt was the

assigned caseworker for both Joey and Sharon Lynn from the time each minor entered the DCFS system until Nesbitt's departure from the agency. Nesbitt testified that during her involvement with the case, there were three service plans.

¶ 14 According to Nesbitt, respondent first came to the attention of DCFS shortly after giving birth to Joey. She stated that within a few days of Joey's birth, respondent "began to have delusions and aggressive behavior." Nesbitt also recalled that right after Joey was born, respondent became upset in the hospital. At that time, respondent did not believe that she needed bottles for the baby because she could feed him through her heart. She noted that at one point, respondent took Joey's bottle "and forcefully placed it into Joey's mouth." Nesbitt also indicated that respondent "had made comments and statements that were not rationale and not stable." Nesbitt testified that at Joey's dispositional hearing she recommended a permanency goal of return home. To that end, Nesbitt developed a service plan with various tasks and services for respondent to complete. Nesbitt stated, for instance, that because of her "severe mental illness," respondent was tasked with continuing services with the Du Page County Health Department where she had been seeing not only a psychiatrist, but also individual therapists and a counselor. Nesbitt stated that the service plan also required respondent to be compliant with her medications, cooperate with home visits, and attend monitored visits with Joey. Nesbitt testified that the latter task would require respondent to show that she had the ability to parent Joey, *e.g.*, feed him and change his diaper.

¶ 15 Nesbitt prepared a permanency hearing report for the court in July 2009, which evaluated the service plan implemented for the preceding six-month period. Nesbitt testified that respondent did not follow through with the tasks provided for her in the service plan and therefore did not achieve the goals set for her. Nesbitt noted, for instance, that respondent was in an abusive relationship with

Raul. In addition, respondent had been diagnosed with schizoaffective disorder. One of respondent's therapists, Dr. Laura Sleger-Moore, agreed to conduct therapy at respondent's home to minimize any transportation issues. However, Dr. Sleger-Moore discontinued the home visits due to safety concerns for herself. The sessions were then scheduled to be held at Dr. Sleger-Moore's office. According to Nesbitt, however, the sessions did not occur as scheduled.

¶ 16 Nesbitt testified that during 2008, respondent attended visits with Joey. However, her visits subsequently became more sporadic. Respondent was scheduled to visit with Joey three times a week early in 2009. Respondent attended seven out of eleven visits scheduled for January 2009. Respondent attended only one visit in February 2009. Respondent did not attend any visits in March 2009. Visits later resumed, and respondent requested that her brother and his family be present for a visit scheduled for April 10, 2009. Nesbitt stated that the focus of the visit ended up not being on Joey as respondent became "agitated" with her brother and requested money from him. Nesbitt also recalled that at a visit on April 17, 2009, respondent was "displaying more childlike behavior than a parent would" and was speaking in a "childlike tone."

¶ 17 Nesbitt testified that she visited respondent's home on multiple occasions. During a visit in January 2009, respondent had bruises on various parts of her body which were "in proportion to a person's hand or finger marks." Respondent was asked whether someone abused her. At that point, Raul, who was present, became irate with respondent. Thereafter, respondent "disengage[d]" and was unable to answer any other questions. Nesbitt also recalled that on April 20, 2009, she went to respondent's apartment to review a service plan with her and respondent became "very irritated, agitated." Respondent thought Nesbitt was "somehow after her or trying to take her baby." Nesbitt felt unsafe and told respondent that she was terminating the visit. However, respondent opened the

front door, slammed it, spun around, “came within a foot of [Nesbitt] with her hand pointed out,” and called Nesbitt names. Nesbitt asked respondent to open the door and let her out, but respondent refused. Nesbitt repeated the request several times before respondent forcefully swung open the door.

¶ 18 Nesbitt testified that after the incident on April 20, 2009, a “critical decision” was made as to respondent’s visits with Joey. Specifically, respondent was required to arrive 30 minutes before any visit with Joey to ensure that the visits would actually happen. Nesbitt testified that after Sharon Lynn was born, visits were scheduled between respondent and the two minors, but the visits were suspended until respondent’s mental condition stabilized as recommended by the Du Page County Health Department in November 2009.

¶ 19 Nesbitt testified that another service plan was dated December 1, 2009, which covered the period from June through December 2009. Nesbitt testified that respondent’s progress was rated as unsuccessful during the period of the service plan.

¶ 20 Nesbitt also testified that she observed many times where respondent was not making connections with reality. She explained that, despite the goal of reunification, when she and respondent spoke about the needs of an infant, respondent did not believe that there was a need to purchase clothes for the child or have a place for the child to sleep. Respondent indicated that the church or someone else would donate cribs, beds, and other supplies that she might need or that the supplies would just show up.

¶ 21 Nesbitt also voiced concerns as to respondent’s safety with regards to her relationship with Raul. Nesbitt noted that respondent had reported verbal and physical altercations between herself and Raul on multiple occasions. As a result, Nesbitt determined that respondent was not making

progress toward the goal of return home. Nesbitt questioned whether respondent would be able to maintain a safe environment for the child if she was unable to maintain her own safety. She stated that the presence of domestic violence would impact respondent's ability to properly care for and protect a child. Nesbitt also recalled that respondent was provided various tasks associated with making a safer environment for a child. For instance, it was suggested that respondent not cohabit with Raul. In that regard, Nesbitt contacted the Du Page County Health Department for assistance. However, respondent was not cooperative about being separated from Raul. Nesbitt added that even after respondent relocated to a new apartment, Raul was spending time with her there.

¶ 22 Nesbitt testified that she was present on February 2, 2010, for a permanency review hearing as to Joey. By that time, the goal for Joey had been changed to substitute care pending court determination on termination of parental rights. At that time, respondent was rated unsatisfactory and found not to have made reasonable efforts or reasonable progress toward her established goals.

¶ 23 On cross-examination by the attorney/GAL for the minors, Nesbitt testified that respondent complied with parts of the service plans, such as signing releases so DCFS could obtain information from the service providers. Nesbitt also stated that there was a time for about six months at the beginning of the case in 2009 when respondent was compliant with her medications. Nesbitt noted, however, that even when respondent was compliant with her medications, there were occasions when her behavior seemed "aggressive and out of control." Nesbitt testified that during the time she was assigned to the case, respondent never successfully completed the behavioral issues she was tasked with addressing. Nesbitt further stated that during the three service plans she administered, respondent did not make satisfactory therapeutic progress with her service providers. Nesbitt explained that respondent would often fail to show for her appointments, and even when she did

show up, no progress was reported as having been made. She opined that respondent lacked motivation to participate in the services offered.

¶ 24 On cross-examination by McCumber, Nesbitt testified that she believed that respondent understood the goals that were being set for her. Nesbitt explained that respondent was able not only to repeat and clearly identify the goals, she would even examine the service plans, review them, and question Nesbitt about them and how she could make sure to follow them. Nesbitt attributed the fact that respondent seemingly understood the goals but failed to comply with them to her mental illness and behavioral problems.

¶ 25 On cross-examination by respondent's attorney, Nesbitt acknowledged that prior to visits being suspended, respondent made some visits with Joey and that respondent showed interest in seeing the minor. Nesbitt testified that the visits were suspended in April 2009 because of the interaction between Nesbitt and respondent at respondent's apartment as well as evidence that respondent was not being compliant with her medication and her instability.

¶ 26 On redirect examination, Nesbitt testified that on those occasions when respondent showed up for visitation, she was "unable to maintain engagement with the child." Nesbitt noted, for instance, that on many occasions when Joey would identify a toy that he wanted to play with, respondent would take the toy away from him and would start to play with it herself at a distance from the child. According to Nesbitt, this would cause Joey to become fussy and cry. Nesbitt added that Joey would "almost be fearful" of selecting another toy to play with and he would distance himself from respondent.

¶ 27 Karina Arteaga testified that she is a child welfare placement worker for DCFS. Arteaga testified that she first became involved in the case involving Joey and Sharon Lynn in March 2010,

after Nesbitt left DCFS. Arteaga testified that the initial permanency hearing she was involved with occurred in July 2010. Arteaga testified that she prepared service plans for respondent based upon the plans initially developed by Nesbitt. Arteaga testified that the first service plan covered the period from which she took over the case through June 2010. Arteaga testified that during this period, respondent completed some tasks successfully, such as signing consents for release of information. She noted that no visits between respondent and the minors occurred during this period because visits had been suspended. Arteaga continued to follow respondent's case after her initial service plan review. The next service plan covered the period from June 2010 through November 2010. Arteaga testified that respondent did not comply with any of the services that were ordered. As such, Arteaga concluded that respondent failed to make reasonable efforts to correct the conditions which were the basis of the removal of the child and that she failed to make reasonable progress toward the return of the minors.¶ 28

Arteaga testified that respondent requested to see the minors in the summer of 2011. The purpose of the visit was so that Dr. Sleger-Moore could assess respondent's behavior. Respondent was instructed that for the visit to occur, she would have to "follow the rules," *i.e.*, she could not have any outbursts and she had to be appropriate. In addition, Dr. Sleger-Moore, Arteaga, and the minors' foster parents had to be present. Arteaga testified that prior to the scheduled visit, she called respondent and left a message to remind her of the visit. Arteaga called respondent again on the day of the scheduled visit, about an hour before it was to occur. Respondent stated that she would be unable to make the visit because of transportation issues. Arteaga testified that prior to her call, respondent never contacted her to tell her that she would not be able to make the visit.

¶ 29 The visit eventually occurred in August 2011. Present at the visit were the two minors, Dr.

Sleger-Moore, the foster mother, and respondent. Arteaga was also present for a half hour. Arteaga testified that during the time she was at the visit, she had the chance to assess respondent's behavior. Arteaga testified that the minors had to be redirected during the visit by the foster parent to engage with respondent. Arteaga testified that respondent was appropriate and tried to play with the children. However, the children were more focused on playing in the playroom than participating in an activity with respondent. Arteaga further testified that she did not observe any emotional reaction from respondent to the minors despite the fact it had been a long time since respondent had seen either of them. Although respondent requested additional visits, Dr. Sleger-Moore, Arteaga, and Arteaga's supervisor decided that there was no clinical benefit to having any additional visits. Arteaga testified that she considered respondent's housing situation, her dependency on others for transportation, her receipt of services from the health department, and her being "needy." Arteaga stated that by "needy," she meant that respondent is not self-sufficient and she puts her needs before those of the children.

¶ 30 Arteaga testified that there was a permanency review hearing in July 2011. At that time, the court determined that while respondent had participated in many of the services, and therefore made some efforts, there was no substantial progress. The next permanency review hearing occurred in January 2012. In preparation for the hearing, Arteaga prepared a permanency hearing report with services for the six-month period preceding the report. Arteaga testified that during the period covered by the report, respondent had received some mental-health services from the Du Page County Health Department, she had been compliant with her medication, she received assistance with housing, and she participated in some individual therapy with Dr. Sleger-Moore.

¶ 31 On cross-examination by respondent's attorney, Arteaga acknowledged that it was not

respondent's choice to stop seeing the minors. Arteaga also acknowledged that at the permanency review hearing in July 2011, respondent was found to have made efforts toward the return of the minors. For instance, she was taking her medication and she was seeing her therapist. Because respondent was generally compliant with the tasks, a visit with the minors was scheduled for August 2011. Arteaga testified that respondent was "appropriate" at the August 2011 visit. However, she noted that when the minors became disconnected from respondent, respondent did not make any attempt to try to redirect them. Arteaga admitted nevertheless that respondent requested more visits with the children. Arteaga also acknowledged that while respondent's demeanor was "flat" during the visit with the children in August 2011, she was unaware how the medications respondent was taking at the time affected her mood or emotions.

¶ 32 The State next called respondent to testify. Respondent stated that she is 36 years old and has resided in a one-bedroom apartment in Glen Ellyn, Illinois, since February 29, 2012. Respondent stated that she lives alone, although friends, including Raul, sometime stop by. Respondent completed three years of college. She stated that she had interned at Walt Disney World during college and has since worked in various other positions, including as a hotel desk clerk and a restaurant hostess. Respondent testified that she learned how to take care of a baby from baby-sitting while she was in junior high and high school. She stated that while baby-sitting, she fed the children and changed their diapers. Respondent also described herself as a "professional babysitter."

¶ 33 Respondent testified that in 1996, she was involuntarily hospitalized due to "harassment" from her employer. Respondent testified that she subsequently received services from the Elgin Mental Health Center from September 2001 through January 2002, but only because she was homeless and did not have money. She also stated that she was hospitalized at Central Du Page

Hospital on more than one occasion, most recently in April 2012. Prior to April 2012, respondent stated she was last hospitalized in October 2010. Respondent testified that she did not agree with the diagnosis of schizoaffective disorder. She explained, “I believe that it is just work harassment. There was really nothing wrong with me. It is just that I am really good at my work and that’s where this whole condition started.” She stated that people she worked with perpetuated the harassment because she is “really pretty, so they cut me down in other ways. They are just jealous of me.”

¶ 34 Due to a lack of time, respondent was unable to finish her testimony on the first court date, and the court continued the matter to July 5, 2012. Thereafter, respondent did not finish her testimony because she did not appear at the next three scheduled court dates. On July 5, 2013, respondent relayed through her attorney that she was unable to come because of transportation issues. On July 6, an investigator with the public defender’s office stated that he went to respondent’s apartment to pick her up that morning. Respondent stated that she was not feeling well and would not be going to court. On July 12, respondent told her attorney that she would be unable to go to court because of transportation issues. However, a court-appointed special advocate (CASA) representative informed the court that she had seen respondent at a McDonald’s restaurant shortly before the hearing was scheduled to commence on July 12. On each date, respondent’s attorney requested a continuance so respondent could be present, but the court denied the requests and the trial continued in respondent’s absence.

¶ 35 Over the objection of respondent’s attorney, the State called Sean McCumber, respondent’s GAL, to testify. McCumber testified that he first met with respondent in October 2010 at his office. McCumber recalled that the first meeting with respondent ended abruptly because respondent became verbally abusive towards McCumber’s staff. However, respondent came back later to

apologize, and the meeting continued for about an hour. During the initial meeting, McCumber informed respondent that his role was to “look out for her best interest.” McCumber stated that respondent repeatedly interrupted him and asked that he issue subpoenas for various witnesses. McCumber responded that it was her attorney’s job to issue subpoenas. McCumber then proceeded to explain that he would “talk to people, investigate matters and report back to the Court with what’s in her best interest.” McCumber testified that respondent eventually understood that he was not her attorney.

¶ 36 McCumber testified that he met with various individuals in his role as respondent’s GAL, including Arteaga, representatives of the minors, the fathers’ attorneys, and the minors’ foster mother. McCumber also reviewed various records that he received from DCFS, including psychology reports from respondent’s doctors and therapists, permanency review “packets” from DCFS, the court file, and reports from CASA. McCumber also testified that he attended various court hearings, including permanency review hearings.

¶ 37 Over the objection of respondent’s attorney, McCumber opined that respondent was unfit to parent the minors. McCumber stated:

“I don’t think she’s fit. I think she’s focused on financial issues. I think she’s focused on how things appear. I don’t think its in her best interest to do anything than terminate her parental rights because she will never get better as long as this post sticks in her road because she is adamant that she is the right person to raise these children and that she should have them and that everybody else is against her, and it’s just simply not the case.”

Later, McCumber expounded on his answer in response to an inquiry from the trial court, again over

the objection of respondent's attorney. McCumber stated that respondent is unable to care for the minors, she is not managing her mental health problems sufficiently, and she only cares about herself. McCumber added that respondent's mental health will not improve until she is able to move on from where she is at.

¶ 38 On cross-examination by the attorney/GAL for the minors, McCumber testified that since the time that he was appointed as respondent's GAL, respondent has received some satisfactory ratings on the service plan tasks she was assigned to complete. However, the majority of her goals have been rated unsatisfactory. McCumber stated that some of the satisfactory scores pertain to respondent signing releases. He noted, however, that respondent has not maintained a job since he was appointed as her GAL and there have been times when respondent has been homeless or living at a "psychiatric-type of facility." McCumber further stated that respondent is not financially independent and he did not believe that she is capable of handling everyday tasks on her own.

¶ 39 On cross-examination by respondent's attorney, McCumber testified that he never visited respondent at home and he did not speak with any of respondent's service providers. He also stated that he has not seen respondent around her children.

¶ 40 Dr. John Murray testified that he is a licensed psychologist. Dr. Murray conducted a psychological examination of respondent pursuant to a court order. As part of that examination, Dr. Murray reviewed various records and he spent 60 minutes interviewing respondent on May 12, 2010. Dr. Murray stated that it was difficult to get respondent to stick with one topic or question and give a full answer. According to Dr. Murray, respondent externalized responsibility for many of her problems and was unable to relate a single relationship with any professional without having some concern as to what he described as a "paranoid perception." For instance, respondent suggested that

the children were taken from her custody “inappropriately.” She stated that one of the minors was removed from her custody not because of anything she had done, but because of mistreatment by a hospital nurse. She also referred to her hospitalizations in psychiatric wards as “inappropriate harassment.”

¶41 Respondent told Dr. Murray that one of her doctors had prescribed the wrong medication and that she was only given medication to help her sleep. In reality, respondent was prescribed medication for a much broader range of symptoms and a more severe diagnosis. Respondent was taking Injev, an injection-form anti-psychotic medication, and Sertraline, an antidepressant. Dr. Murray stated that injection-form medications are usually given to those who are not consistently compliant in taking oral medications or those whose symptoms are so severe that they are not organized enough to take medication on their own.

¶42 Dr. Murray testified that respondent was diagnosed in 2008 with schizoaffective disorder and dependent personality disorder. More recently, respondent was diagnosed with schizophrenia. Dr. Murray testified that during the interview respondent demonstrated several very severe psychotic symptoms, including paranoid thinking, loose associations, and a “flight of ideas.” In addition, respondent was disorganized to the point of being confused. According to Dr. Murray, these symptoms are consistent with a diagnosis of schizophrenia. Dr. Murray also observed inappropriate reactions from respondent during the interview. For instance, respondent laughed at inappropriate times and used crude language. Dr. Murray stated that respondent terminated the interview early, and a scheduled follow-up interview never occurred. Further, in the days following the interview, respondent left a profanity-laced voicemail for Dr. Murray. Dr. Murray testified that respondent’s mental status and behavior affected her ability to parent the children, particularly due to her

significant paranoid thinking, impulsiveness, and aggression.

¶ 43 On cross-examination by respondent's attorney, Dr. Murray stated that he has not seen respondent for two years. He acknowledged that a person's mental status could change in that time frame. He indicated, however, that the possibility of respondent's diagnosis being different at this time was "very remote." Dr. Murray stated that he has never observed respondent interact with her children.

¶ 44 On July 17, 2012, the trial court entered an order finding that respondent was unfit to parent either minor. The court determined that the State had proven by clear and convincing evidence that respondent is unfit to parent Joey as alleged in paragraphs 5(a), 5(b), 5(f), 5(g)(ii), and 5(g)(iii) of the termination petition. In addition, the court found that the State had proven by clear and convincing evidence the allegations in paragraph 5(a) of the petition to terminate parental rights with respect to Sharon Lynn and the allegations in paragraph 5(b) insofar as it related to mental illness and mental impairment. The matter then proceeded to the best-interests phase, during which the court heard testimony from Arteaga, the minors' foster mother, and respondent.

¶ 45 Arteaga testified that both of the minors at issue have been in traditional foster care since his or her respective birth and that the minors reside in the same home. According to Arteaga, the foster parents have indicated a willingness to provide permanency for the two children. Arteaga testified that she has visited the minors in the foster home at least once a month since she took over the case. She opined that the foster parents are capable of providing for the minors. She also observed the children have bonded with the foster parents. They refer to the foster parents as "mom" and "dad" and show affection to the foster parents. Arteaga testified that the minors have adequate clothing and toys and are adequately fed. She further testified that the minors' educational and health-care

needs are being met by the foster parents.

¶ 46 Arteaga acknowledged that a visit between the minors and respondent in August 2011 went “well.” She noted, however, that during the visit the children had to be redirected to get them to engage with respondent. Arteaga opined that it is in the best interest of the children to remain with the foster parents who are willing to provide them permanency. She emphasized that the foster home is the only home the minors have known as they have lived there since birth. She stated that based on her observations, there is no bond between respondent and the two minors.

¶ 47 The foster mother testified that Joey was placed with the family when he was 17 days old and Sharon Lynn was placed with the family when she was 3 days old. The foster mother testified that the minors refer to her as “mom” and to her husband as “dad.” The children show physical affection towards the foster parents and they tell the foster parents that they love them. The foster mother stated that the minors have friends that they see on a regular basis and they interact with their extended families. The foster mother testified that each child has his or her own bedroom. The foster mother noted that Joey was born with a hole in his heart. As such, she and her husband have had to take him to a cardiologist. In addition, Joey sees a pulmonologist because he has symptoms of asthma. The foster mother also testified that she has been working to provide speech, developmental, physical, and occupational therapy to the children and that she would continue to work with DCFS to provide these therapies should respondent’s parental rights be terminated. The foster mother stated that she and her husband love the children very much and would adopt them if they became available for adoption.

¶ 48 McCumber called respondent to testify at the best-interest phase. Respondent stated that she still resides in an apartment in Glen Ellyn, Illinois. When asked if anyone else resides in the

apartment, respondent stated that Raul sometimes comes over. Respondent testified that she last saw the minors in August 2011. She stated that she and the minors had a “good visit” at that time. Respondent testified that the August 2011 visit was the first time she saw Sharon Lynn since her birth. Respondent testified that prior to August 2011, she saw Joey in September 2010. Respondent testified that she decided to stop the visits with Joey after September 2010 to allow him to bond with the foster family. She acknowledged that at the time DCFS was in the process of stopping the visits, but stated that she was also “in the process of stopping [the visits] [her]self.” Respondent testified that she did not want her parental rights terminated. She requested supervised visits with the minors for two years before they are returned to her custody.

¶ 49 Upon questioning by the attorney/GAL for the minors, respondent testified that Raul might move into her apartment despite issues of domestic between her and Raul. Respondent stated that she is not employed, but has received money from social security since July 2003. Respondent stated that she has been looking for work for the last three years and has submitted eight or nine applications for employment but has been turned down each time. Respondent also opined that the decision to place the minors in therapy was “ludicrous and asinine” because there is nothing wrong with the children.

¶ 50 Upon examination by her attorney, respondent testified that she loves her children and she wants them to eventually come home. Respondent testified that although she is taking her medication as prescribed, she is “trying to work [her]self down off the medicine.” She stated, however, that whenever she gets down to a low level of medication, the Du Page County Health Department increases her medication. Respondent testified that in addition to the social security she receives, she could support the children with the help of the Du Page County Health Department and

food pantries.

¶ 51 At the close of evidence, after argument by the parties, the trial court found that it was in the best interest of the minors that respondent's parental rights be terminated. After the denial of her motion to reconsider and motion for new hearing on termination of parental rights, respondent filed a separate notice of appeal with respect to each minor. We docketed the appeal related to Sharon Lynn as Case No. 2-12-1103. We docketed the appeal related to Joey as Case No. 2-12-1104. We subsequently allowed respondent's motion to consolidate the two appeals.

¶ 52

II. ANALYSIS

¶ 53 Prior to discussing the merits of respondent's appeal, we address the timeliness of our decision. This case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) because it involves a matter affecting the best interests of children. With respect to such cases, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides in relevant part that "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." In this case, respondent filed her notices of appeal on October 9, 2012. Thus, the 150-day period to issue our decision expired on March 8, 2013. However, we granted both parties' requests for extensions of time to file their opening briefs. In addition, we granted respondent's request for an extension of time to file her reply brief. Respondent did not file her reply brief within the time allotted, and we later granted respondent's request for leave to file her reply brief *instanter*. As a result, briefing in this case was not completed until late in February 2013. As such, we find good cause for issuing our decision after the 150-day deadline. See *In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 732-33 (2006) (noting that granting parties' requests for extension of time to file their briefs allowed the parties the opportunity to develop and present their

positions). We now turn to the merits of the appeal.

¶ 54

A. Fitness to Stand Trial

¶ 55 On appeal, respondent first argues that the trial court should have held a fitness hearing to determine her fitness to stand trial prior to the commencement of the proceedings to terminate her parental rights. In support of her argument that she was entitled to a fitness hearing, respondent relies on provisions of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/100-1 *et seq.* (West 2008)). Respondent contends that the court's failure to hold a hearing regarding her fitness to stand trial deprived her of due process. Respondent acknowledges that she never expressly requested a hearing on her fitness to stand trial. However, she attributes her failure to request a hearing on a lack of precedent.

¶ 56 Pursuant to the Code, a criminal defendant is presumed fit to stand trial or to plead. 725 ILCS 5/104-10 (West 2008). However, when there is a *bona fide* doubt as to a defendant's fitness, he or she is entitled to a hearing on the matter. 725 ILCS 5/104-11, 104-16 (West 2008). The purpose of the hearing is to determine whether the defendant is fit to stand trial or plead, and, if the defendant is found unfit, whether there is a substantial probability that treatment will return the defendant to fitness within one year. 725 ILCS 5/104-16(d) (West 2008). "In determining whether criminal procedural protections should be applied to civil proceedings, courts should consider whether the statute is punitive in nature and if not, criminal protections would usually not apply." *In re Bernice B.*, 352 Ill. App. 3d 167, 175 (2004) (citing *United States v. Usery*, 518 U.S. 267, 288 (1996)).

¶ 57 As it relates to parental rights, the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2008)) is not punitive. *In re Bernice B.*, 352 Ill. App. 3d at 175. Nevertheless, proceedings involving the

termination of parental rights involve fundamental liberty interests and invoke some constitutional concerns akin to those implicated in criminal cases. *In re J.R.*, 342 Ill. App. 3d 310, 316 (2003); see also *In re Charles A.*, 367 Ill. App. 3d 800, 802 (2006) (“A parent has a fundamental liberty interest in maintaining custody of his or her child.”); *Bernice B.*, 352 Ill. App. 3d at 175. As such, the procedures employed in terminating one’s parental rights must comport with the requirements of the due process clause of the United States Constitution (U.S. Const., amend. XIV, § 1 (providing that no State shall “deprive any person of life, liberty, or property, without due process of law”)). *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *In re Dar C.*, 2011 IL 111083, ¶ 61; *Charles A.*, 367 Ill. App. 3d at 802-03; *Bernice B.*, 352 Ill. App. 3d at 175-76.

¶ 58 In *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Supreme Court identified three factors to consider in determining what due process requires in proceedings implicating fundamental liberty interests. See *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003); *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). The *Mathews* factors are: (1) the private interest affected by the proceeding; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value, if any, of additional or alternative safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or alternative procedures would require. *Mathews*, 424 U.S. at 335.

¶ 59 With respect to the first *Mathews* factor, two private interests are involved in a proceeding to terminate parental rights: the parent’s interest in raising his or her child and the child’s interest in a safe and stable home. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Regarding the former, we note that a parent has a fundamental interest in the care, custody, and management of his or her child and in maintaining a parental relationship with the child. *Lassiter v. Department of Social Services of*

Durham County, North Carolina, 452 U.S. 18, 27 (1981); *D.T.*, 212 Ill. 2d at 363 (2004); *Charles A.*, 367 Ill. App. 3d at 803; *Bernice B.*, 352 Ill. App. 3d at 176. When a proceeding to terminate one's parental rights is brought, the State seeks not only to infringe this right, but to end it. *Santosky*, 455 U.S. at 759; *Charles A.*, 367 Ill. App. 3d at 803. Therefore, one's parental rights will not be terminated "lightly." *In re M.H.*, 196 Ill. App. 3d 356, 365 (2001). However, the child also has a private interest in his or her own well-being and in a stable environment. *People v. R.G.*, 131 Ill. 2d 328, 354 (1989). Moreover, a child has an interest in terminating State custody. *Bernice B.*, 352 Ill. App. 3d at 176.

¶ 60 Although respondent has stated that she does not want her parental rights to the minors terminated, the record reflects that respondent was unable to care for the children's needs. For instance, Nesbitt testified that shortly after Joey's birth, respondent indicated that there was no need for bottles since she could feed Joey "through her heart." Nesbitt further testified that respondent did not believe that there was a need to provide for the minors' needs, such as a place to sleep or clothing. Arteaga noted that while respondent participated in some of the services outlined in the service plan, she had not made substantial progress. Arteaga added that respondent was not self-sufficient and depended on others to obtain housing, transportation, and healthcare. Arteaga opined that respondent consistently put her needs before those of the children. The evidence presented in this case also shows that Joey and Sharon Lynn have resided with the same foster family since shortly after each child was born and have bonded with the foster family. Prolonging the termination process would place the minors in indefinite limbo.

¶ 61 The second *Mathews* factor requires us to consider to what extent, if any, the absence of a hearing regarding respondent's fitness to stand trial increased the risk that respondent's parental

rights were erroneously terminated and to consider the probable value, if any, of additional or substitute procedural safeguards. *Mathews*, 424 U.S. at 335. Respondent asserts that the evidence at trial showed that she had a mental health diagnosis of schizoaffective disorder, dependent personality disorder, and schizophrenia. Yet, she asserts, when she took the witness stand, there was no inquiry as to whether she was properly medicated and understood the proceedings. In addition, she notes that during the trial, the court remarked about her “strange” behavior and Dr. Murray testified that her diagnosis can improve with time and be controlled by medication. Thus, she concludes, the termination proceedings “may have been different had the court waited to commence those proceedings until she was ‘restored to fitness.’” We disagree. Respondent’s speculation that the result of the termination proceeding “may have been different” had the court postponed it until she was “restored to fitness” finds no support in the record. Respondent does not indicate how the outcome of the termination hearing would have been different. For instance, respondent does not explain how she could have better assisted her attorney had she been found competent to participate in the termination proceedings. In addition, respondent does not challenge either the finding of parental unfitness itself or the finding that it is in the minors’ best interest to terminate her parental rights and she does not identify any additional evidence that would have been introduced.

¶ 62 More significantly, we find that had a hearing to determine respondent’s fitness to stand trial been conducted, it could have provided additional evidence weighing in favor of the termination of respondent’s parental rights. A parent may be found unfit if the parent suffers from a mental impairment or mental illness which renders him or her unable to discharge parental responsibilities for a reasonable period of time. 750 ILCS 50/1(D)(p) (West 2008); *Charles A.*, 367 Ill. App. 3d at 804. Indeed, the termination petition filed on behalf of Sharon Lynn made such an allegation.

Similarly, the determination of whether termination of parental rights is in a child's best interests requires the trial court to consider various statutory factors, including the child's physical safety and welfare and the child's need for stability and continuity with parent figures. 705 ILCS 405/1-3(4.05)(a), (g) (West 2008); *Bernice B.*, 352 Ill. App. 3d at 177. As such, a finding at a hearing on respondent's fitness to stand trial that respondent was not mentally fit could have provided additional evidence on these factors weighing in favor of the termination of respondent's parental rights to Joey and Sharon Lynn. See *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 177.

¶ 63 The third *Mathews* factor requires us to consider the governmental interests involved in the termination of parental rights proceedings, including the function of the proceeding in question and the fiscal and administrative burdens that requiring a fitness hearing would place on the government. *Mathews*, 424 U.S. at 335. The State has a fundamental interest in a proceeding to terminate parental rights. *In re M.H.*, 196 Ill. 2d 356, 367 (2001). The State's interest is twofold. First, the State has a *parens patriae* interest in preserving and promoting a child's welfare. *M.H.*, 196 Ill. 2d at 367. The Illinois General Assembly has recognized that a delay in the adjudication of a proceeding to terminate parental rights "can cause grave harm to a child and the family." 705 ILCS 405/2-14(a) (West 2008); *Charles A.*, 367 Ill. App. 3d at 803. Accordingly, a proceeding to terminate parental rights must be resolved in an expeditious manner. *Charles A.*, 367 Ill. App. 3d at 803-04. The indefinite postponement of a termination proceeding until a hearing on a parent's fitness to stand trial could be conducted or until a parent is restored to fitness would delay the minors' interest in finding a permanent home and therefore frustrate the State's *parens patriae* interest in preserving and promoting the welfare of the child. See *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 177-78.

¶ 64 In addition, determining whether a parent is mentally fit to stand trial would impose increased fiscal and administrative burdens on the State. *M.H.*, 196 Ill. 2d at 367; *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 178. The State could be required to expend legal resources to establish the parent’s competency and, potentially, pay for the treatment to restore the parent to fitness. *Charles A.*, 367 Ill. App. 3d at 804; *Bernice B.*, 352 Ill. App. 3d at 178. In addition, the State could be required to pay for the child’s foster care during the delay caused by the fitness hearing. *Charles A.*, 367 Ill. App. 3d at 804. The process could take months or years, adding to the fiscal costs and administrative burdens. *Bernice B.*, 352 Ill. App. 3d at 178.

¶ 65 Accordingly, based on our consideration of the factors set forth in *Mathews*, we conclude that the absence of a hearing on respondent’s fitness to stand trial did not violate respondent’s right to due process. Therefore, we decline to reverse the trial court’s decision on this basis.

¶ 66 B. Appointment of GAL

¶ 67 Next, respondent challenges the trial court’s appointment of a GAL to act on her behalf. According to respondent, the trial court did not have the “inherent authority” to appoint a GAL for her because, although she had a mental-health diagnosis, she was a “competent adult” represented by an attorney. In support of her argument, respondent relies principally upon *J.H. and J.D. v. Ada S. McKinley Community Services, Inc.*, 369 Ill. App. 3d 803 (2006).

¶ 68 In *J.H.*, the appellate court held that the trial court exceeded its authority when it *sua sponte* and without a hearing appointed a GAL for competent adult plaintiffs where the plaintiffs were already represented by counsel and counsel objected to the appointment of a GAL on the plaintiffs’ behalf. *J.H.*, 369 Ill. App. 3d at 808-20. We find respondent’s reliance on *J.H.* misplaced.

¶ 69 The record in this case establishes the following. On March 9, 2010, prior to the adjudicatory

hearing for Sharon Lynn, respondent filed a request for a psychological evaluation. The trial court granted respondent's request and ordered her to contact Dr. John Murray for an evaluation. On July 19, 2010, Dr. Murray issued a report. Dr. Murray's primary diagnosis was schizophrenia, paranoid type in partial remission. Dr. Murray noted that claimant presented with "disorganization, impaired judgment, impulsivity and paranoid thought process, affecting her participation in parenting and reunification efforts."

¶ 70 The day after Dr. Murray issued his report, the parties appeared before the court. The court noted that it had received a copy of Dr. Murray's psychological evaluation. At that hearing, the State noted that it had the opportunity to review Dr. Murray's report as well as an evaluation completed by the Du Page County Health Department. Based on those reports, the State made an oral motion to appoint a GAL on respondent's behalf. The GAL for the minors agreed with the State's motion. The court continued the matter for two weeks to allow all of the parties to review Dr. Murray's report.

¶ 71 The next hearing was held on August 3, 2010. At that time, respondent was not present because she was in the psychiatric ward at Central Du Page Hospital. However, after having read Dr. Murray's report, respondent's attorney made an oral motion that a GAL be appointed for respondent. Respondent's attorney suggested that Sean McCumber be serve as respondent's GAL. Counsel stated that she spoke to McCumber and that he was available. The matter was continued until August 24, 2010.

¶ 72 On August 24, 2010, the court noted that the matter had been continued because "there was a possible issue of appointment of [a] guardian *ad litem*" in light of Dr. Murray's report. Respondent's attorney indicated that she spoke to respondent about having a GAL appointed on

respondent's behalf. The attorney then informed the court that she did not believe that it would be "appropriate" for her to request a GAL. The State then moved to have the GAL appointed. Respondent's attorney stated that she "won't take [a] position on that." The GAL for the minors agreed that a GAL should be appointed for respondent. Respondent's attorney indicated that respondent wished to have a relative serve as GAL. After learning that the relatives respondent wished to be appointed lived out of state, the court stated that it would make more sense to appoint someone who is local. Respondent herself then suggested an attorney from the public defender's office. However, respondent's attorney, who was also a public defender, stated that she would prefer that any GAL be outside of her office to avoid the appearance of impropriety. Respondent then suggested that attorney Steve Mevorah be appointed as GAL. The trial court agreed to continue the matter for respondent to contact Mevorah.

¶ 73 The parties next appeared before the court on August 31, 2010. At that time, respondent's attorney noted that both Mevorah and McCumber had been contacted. Counsel left a message for Mevorah, but did not receive a response. McCumber told counsel that he would be willing to serve as respondent's GAL. The court then asked respondent whether she had "any problem" with the appointment of McCumber. Respondent stated that she would prefer Mevorah. The court instructed respondent to meet with Mevorah to ensure that he was willing to serve as her GAL. The matter was then continued. On September 7, 2010, respondent informed the court that she contacted Mevorah, but he did not have any appointments available. The court agreed to continue the matter again to allow respondent to meet with Mevorah. On September 28, 2010, Mevorah appeared before the court. Mevorah declined the appointment as respondent's GAL on the basis that he had no GAL training. The court then appointed McCumber to serve as respondent's GAL.

¶ 74 As the foregoing factual recitation indicates, the circumstances leading to the appointment in this case were vastly different than those in *J.H.* Notably, in this case, the trial court did not *sua sponte* appoint a GAL. Rather, following receipt of Dr. Murray’s psychological evaluation, the State, the GAL for the minors, and respondent’s attorney all requested the appointment of a GAL to serve on respondent’s behalf. Although respondent’s attorney later indicated that she did not believe that it was “appropriate” for her to request a GAL for respondent, neither she nor respondent ever formally objected to the appointment. See *In re Estate of Dyniewicz*, 271 Ill. App. 3d 616, 623 (1995) (rejecting argument that trial court lacked subject matter jurisdiction to appoint GAL for an adult and also noting that no one objected to the appointment). To the contrary, both respondent and her attorney actively participated in the process leading to the appointment of the GAL. As noted above, when respondent’s attorney initially suggested the appointment of a GAL, she recommended McCumber to serve in that position. Further, respondent herself suggested various individuals she would have like to serve as her GAL. The trial court seriously entertained respondent’s suggestions before ultimately rejecting them for various reasons.

¶ 75 Respondent asserts that assuming the trial court had the authority to appoint a GAL for an adult, it is derived from the Probate Act (755 ILCS 5/1-1 *et seq.* (West 2008)), and the only instance provided by statute where a guardian *ad litem* can be appointed in regard to a competent adult is where a petition has been filed to adjudicate such person disabled. See 755 ILCS 5/11a-10(a). Again, respondent relies on *J.H.* for this proposition. However, the *J.H.* court acknowledged that there were circumstances when the appointment of a GAL outside of the Probate Act would be appropriate. *J.H.*, 369 Ill. App. 3d at 819. The *J.H.* court stated: “By this decision we do not hold that a trial court cannot appoint a guardian *ad litem* for an adult litigant not yet adjudged disabled,

where the court has concerns about the mental capacity of the litigant and there is no objection to the appointment of a guardian *ad litem*.” *J.H.*, 369 Ill. App. 3d at 819; see also *In re Mark W.*, 228 Ill. 2d 365, 373-75 (2008) (approving appointment of GAL for adult adjudged disabled even in the absence of controlling statutory authority). As noted in the preceding paragraph, neither respondent nor her attorney objected to the appointment of the GAL in this case. Moreover, it is clear that the trial court in this case had concerns about respondent’s mental capacity or it would not have granted respondent’s request to undergo a psychological evaluation. Indeed, prior to appointing the GAL in this case, the court had before it Dr. Murray’s psychological evaluation. The court was also informed that respondent had been admitted to the psychiatric ward at Central Du Page Hospital during the course of the court proceedings. Respondent even acknowledges in her brief before this court that while she was never formally adjudged disabled, “she may nonetheless be disabled.”

¶ 76 Respondent also suggests that the appointment of a GAL on her behalf “seriously impinged” upon her rights to procedural due process. The hallmarks of procedural due process are notice and an opportunity to be heard. *In re Custody of Ayala*, 344 Ill. App. 3d 574, 586 (2003). Respondent was clearly provided notice that a GAL may be appointed on her behalf. She and her attorney were in court on July 20, 2010, when the State and the GAL for the minors made the request for a GAL. Moreover, respondent was provided an opportunity to be heard regarding the appointment. The court continued the matter to provide the parties more time to review Dr. Murray’s report. In addition, respondent actively participated in the proceedings leading to the appointment of the GAL. She suggested various individuals to serve as her GAL. The court considered her suggestions and even granted her continuances to interview these individuals. Respondent does not indicate what additional process was due.

¶ 77 We note further that even if we were to hold that it was improper for the trial court to appoint a GAL on respondent's behalf under the circumstances of this case, we would nevertheless be compelled to affirm the decision of the trial court. Significantly, respondent does not indicate how she was prejudiced by the trial court's decision. We note that the trial court found respondent unfit to parent the minors on multiple grounds and that it was in the minors' best interest that her parental rights be terminated. Respondent does not challenge the trial court's ruling on appeal, and we find that the evidence overwhelmingly supports the trial court's findings. In addition, respondent does not indicate how, given the overwhelming nature of the evidence, the outcome of this case would have been different had she been allowed to proceed without a GAL. Accordingly, any error was harmless. See *In re Kenneth F.*, 332 Ill. App. 3d 674, 680 (2002) (applying harmless-error analysis to parental termination proceeding, recognizing that "[a]n error that prejudices no one should not prevent children, who are the objects of these proceedings, from attaining some level of stability"). For all of the foregoing reasons, we decline to reverse the judgment of the trial court on the basis that the appointment of a GAL on respondent's behalf was error.

¶ 78 C. Scope of GAL's Representation

¶ 79 Respondent next argues that McCumber, the GAL assigned on her behalf, exceeded the limited scope of his permitted representation. Our supreme court has stated that a GAL functions not as the ward's attorney, but as "the eyes and the ears of the court." *Mark W.*, 228 Ill. 2d at 374. "The traditional role of the guardian *ad litem* is not to advocate for what the ward wants but, instead, to make a recommendation to the court as to what is in the ward's best interests." *Mark W.*, 228 Ill. 2d at 374.

¶ 80 Respondent complains that the trial court "was not quite sure [of] the scope of the GAL's

representation.” However, at the commencement of the termination proceeding, the trial court stated that McCumber was not “an advocate” and indicated that McCumber’s role was to “stand for the best interests of the ward.” The court stated that in furtherance of this role, respondent had the right to ask questions of witnesses as to what he thinks is in respondent’s best interests. Moreover, during McCumber’s testimony at the unfitness stage of the hearing, McCumber stated that his role was to “serve as sort of the eyes and the ears of the Court and provide information to the Court as to what’s in the best interest of the ward, which at this point would be an adult woman.” Thus, McCumber’s understanding as to his role as respondent’s GAL was aligned with the supreme court’s statement as to the role of a GAL. *Mark W.*, 228 Ill. 2d at 274. Accordingly, even if the trial court did not clearly enumerate McCumber’s scope as respondent’s GAL, McCumber had a clear understanding of the limits of his role.

¶ 81 Respondent also complains generally that it was improper for McCumber to actively participate in the termination proceeding. She noted that he voiced objections, questioned witnesses, and even presented a closing argument. According to respondent, “the only intended role [of a GAL] is to take a position and present an argument.” Respondent cites no authority for this proposition. Moreover, she cites only two examples of how McCumber allegedly exceeded the scope of his representation. First, she asserts that, over the objection of her attorney, McCumber was improperly allowed to offer an opinion regarding whether respondent was fit to parent the minors. During the unfitness phase of the termination proceeding, the State asked McCumber his opinion as to respondent’s fitness to parent the minors. Over the objection of respondent’s attorney, the trial court allowed McCumber to respond. As noted earlier, McCumber testified as follows:

“I don’t think she’s fit. I think she’s focused on financial issues. I think she’s

focused on how things appear. *I don't think it's in her best interest* to do anything than terminate her parental rights because she will never get better as long as this post sticks in her road because she is adamant that she is the right person to raise these children and that she should have them and that everybody else is against her, and it's just simply not the case.” (Emphasis added.)

The foregoing passage indicates that McCumber analyzed whether respondent was fit in light of respondent's best interest. Therefore, we do not find that McCumber's opinion regarding whether respondent was unfit exceeded the scope of his role as respondent's GAL.

¶ 82 Moreover, to the extent that McCumber's testimony regarding respondent's fitness to parent was improper, respondent does not indicate how she was prejudiced by it. In ruling on the objection of respondent's attorney, the trial court recognized that it was its “job,” not McCumber's, to decide whether respondent is unfit. Nevertheless, the court found that it could rely upon “documents, testimony and whatnot” to make its decision. Further, it found that McCumber's testimony would be “helpful” in making its decision because, as respondent's GAL, he is “familiar” with respondent. Respondent does not cite any authority that the trial court is prohibited from considering others' opinions in rendering a decision on parental fitness.

¶ 83 Respondent also complains that at the very end of the termination proceedings, the court “entrusted the GAL the role of making sure that the trial was done correctly.” According to respondent, such a role “is clearly the responsibility of [her] very capable attorney.” The specific language respondent cites is the italicized language from the following passage:

“THE COURT: And, Mr. McCumber, just so I make sure I understand you, if I'm understanding you correctly, it seems to me that you feel that a large part of your function

at [the best interest] stage of the hearing and throughout the hearing as a whole was to make sure if [termination] was going to happen to the person that you're entrusted guardianship with, that it was done correctly and *all the I's were dotted and all the T's were crossed?*

MR. MCCUMBER: That is correct.

THE COURT: Is that a fair statement?

MR. MCCUMBER: That is a very fair statement, your Honor.”

Again, we do not find that the court's comments to McCumber establishes that McCumber exceeded his role as respondent's GAL. It was McCumber's responsibility to act in respondent's best interest. Undoubtedly, part of that responsibility is to make sure that there was some type of closure for respondent. A review of the transcript in this case suggests that respondent was frustrated by the length of the parental termination process. By verifying that the proceedings were done correctly, McCumber was acting in respondent's best interest by ensuring that she would not have to endure the lengthy termination process over again. We find no error.

¶ 84

III. CONCLUSION

¶ 85 For the reasons set forth above, we affirm the judgment of the circuit court of Du Page County.

¶ 86 Affirmed.