

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

2013 IL App (4th) 120396-U

NO. 4-12-0396

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 5, 2013
Carla Bender
4th District Appellate
Court, IL

In re: RICHARD W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JD296
RICHARD W.,)	
Respondent-Appellant.)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* No *per se* conflict of interest existed because the record was devoid of evidence the assistant public defender was acting as both trial counsel and guardian *ad litem* for respondent.
- ¶ 2 In December 2011, Champaign County State's Attorney Julia Rietz filed a delinquency petition against respondent, Richard W., alleging attempt (robbery) (720 ILCS 5/8-4(a), 720 ILCS 5/18-1 (West 2010)) and resisting a peace officer (720 ILCS 5/31-1 (West 2010)). Following a March 2012 adjudicatory hearing, the trial court found respondent guilty of both counts beyond a reasonable doubt and adjudged him a delinquent minor.
- ¶ 3 In April 2012, the trial court sentenced respondent to 24 months' probation.
- ¶ 4 On appeal, respondent asserts the trial court created a *per se* conflict of interest by appointing counsel to act as both his attorney and guardian *ad litem* (GAL).

¶ 5 We affirm.

¶ 6 I. BACKGROUND

¶ 7 In December 2011, Champaign County State's Attorney Julia Rietz filed a delinquency petition against respondent, Richard W., alleging attempt (robbery) (720 ILCS 5/8-4(a), 720 ILCS 5/18-1 (West 2010)) and resisting a peace officer (720 ILCS 5/31-1 (West 2010)). The allegations in the petition stemmed from the attempted robbery of a pizza delivery driver and the subsequent flight from responding police officers. On December 19, 2011, respondent appeared in court and was admonished on the charges against him. After giving admonishments, the trial court noted:

"[T]he Respondent minor is already represented by the Office of the Public Defender in regard to other matters pending before the Court. That office will be appointed to act as court-appointed counsel and Guardian ad Litem for the minor in regard to the Petition for Adjudication of Delinquency and Wardship. Assistant Public Defender Stephanie Corum appears."

¶ 8 In March 2012, the trial court conducted respondent's adjudicatory hearing. After hearing evidence, the trial court found the State had proved respondent guilty of attempt (robbery) and resisting a peace officer beyond a reasonable doubt and adjudicated him a delinquent minor.

¶ 9 In April 2012, the trial court sentenced respondent to 24 months' probation.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent asserts the trial court created a *per se* conflict of interest by appointing counsel to act as both his attorney and GAL.

¶ 13 Claims of ineffective assistance of counsel are generally measured under the two-pronged deficient-performance-and-prejudice standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). However, when an attorney labors under a *per se* conflict of interest, the accused is not required to establish prejudice. See, e.g., *People v. Daly*, 341 Ill. App. 3d 372, 376, 792 N.E.2d 446, 450 (2003). "The *per se* conflict rule is designed to avoid (1) unfairness to the defendant, who may not be able to determine whether his representation was affected by the conflict, and (2) putting the honest practitioner in a position where he may be required to choose between conflicting duties." *Id.* Whether an attorney has been appointed to act as both a defense attorney and GAL, and whether that dual representation constitutes a *per se* conflict of interest, is a question of law which we review *de novo*. *People v. Austin M.*, 2012 IL 111194, ¶¶ 66, 87, 975 N.E.2d 22.

¶ 14 Respondent cites *Austin M.* for the proposition that an attorney who is appointed to fulfill both the roles of defense attorney and GAL labors under a *per se* conflict of interest given the "inherent conflict between the professional responsibilities of a defense attorney and a GAL." *Austin M.*, 2012 IL 111194, ¶ 83, 975 N.E.2d 22. This is true because a defense attorney's loyalty rests solely with the client, whereas a GAL "must act in the role of a concerned parent, which is often in opposition to the position of defense counsel." *Id.*, ¶ 85, 975 N.E.2d 22.

¶ 15 In this case, respondent argues the trial court's express appointment of trial counsel as both defense attorney and GAL gave rise to a *per se* conflict of interest under *Austin M.* We disagree.

¶ 16 The trial court in *Austin M.* did not specifically appoint the minor's attorney as the minor's GAL; however, the court described counsel's functions as those of a classic GAL and counsel never attempted to correct the court's description of his role. *Id.*, ¶¶ 89, 90, 975 N.E.2d 22. Further, on multiple occasions throughout the proceedings, counsel made it known "that he shared with the court, the State, and the parents, the common goal of getting to 'the truth.'" *Id.*, ¶ 98, 975 N.E.2d 22. "[Counsel] also suggested that he believed an adjudication and the attendant consequences would be in Austin's 'best interests' if, in fact, he committed the charged offenses." *Id.* The supreme court found the defense attorney was acting under a *per se* conflict of interest because he conducted himself as a GAL rather than a traditional defense attorney. *Id.*, ¶ 101, 975 N.E.2d 22.

¶ 17 In this case, the trial court orally pronounced it was appointing the office of the public defender to act as respondent's attorney and GAL. During a December 19, 2011, hearing, the court stated, "The court notes that the Respondent minor is already represented by the office of the Public Defender in regard to other pending matters before the court. That office will be appointed to act as court-appointed counsel and guardian ad litem for the minor in regard to the petition for adjudication of delinquency and wardship on file in this cause." Unlike in *Austin M.*, the court offered no explanation of appointed counsel's role or responsibility. Thereafter, three different assistant public defenders appeared as respondent's attorney at various times throughout the case (Stephanie Corum, Melinda Licciardello, and Katie Jessup), but the record is devoid of any indication that any of them were also appearing as respondent's GAL.

¶ 18 Given the fact that in *Austin M.*, counsel was determined to have acted as GAL in the absence of an express appointment, it is clear the designation given to counsel by the court

