

NOTICE

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2013 IL App (5th) 120462-U
NO. 5-12-0462
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

In re G.A.R., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Hardin County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 09-JA-1
)	
Rob R. and Carolyn R.,)	Honorable
)	Paul W. Lamar,
Respondents-Appellants).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Spomer and Justice Cates concurred in the judgment.

ORDER

- ¶ 1 *Held*: Where the parents of G.A.R. were afforded their due process rights in the proceeding in which their parental rights were terminated, they did not receive ineffective assistance of counsel, and we affirm the trial court.
- ¶ 2 **FACTS**
- ¶ 3 This case has been before our court at an earlier stage of the proceedings. We affirmed the trial court's orders finding that Carolyn R.'s son, G.A.R., was a neglected minor and needed to be a ward of the court. *In re G.A.R.*, No. 5-09-0283 (Oct. 22, 2009) (unpublished order under Supreme Court Rule 23).
- ¶ 4 G.A.R. was born at 24 weeks of gestation on July 27, 2008. *Id.* at 1. He spent the first three months of his life in Cardinal Glennon Hospital in St. Louis. *Id.* At discharge, a Cardinal Glennon employee placed a hotline call to the Illinois Department of Children and Family Services (DCFS) (to indicate concern about the child, the care that he required, and

the parents' ability to provide that level of care. *Id.* After discharge, and after being cleared by DCFS to bring the child home, G.A.R. missed his first scheduled pediatric appointment. *Id.* at 2. G.A.R. became ill with a respiratory infection in November 2008, and his parents brought him to Cardinal Glennon Hospital. *Id.* G.A.R. was admitted to the hospital for several days of care. *Id.* G.A.R. was discharged in December with directions to follow-up with an Illinois pediatrician later in the week. *Id.* His parents did not take him to the doctor, resulting in another medical neglect hotline call to DCFS. *Id.* at 2-3. The DCFS investigator stressed the importance of this follow-up medical appointment and was assured by Rob and Carolyn that G.A.R. would visit the doctor within a few days. *Id.* at 3. More than one month after G.A.R. was discharged from Cardinal Glennon, he still had not been seen by a pediatrician. *Id.* At the end of December, DCFS took G.A.R. into protective custody, and G.A.R., who remained ill, was admitted into a hospital in Carbondale with two partially collapsed lungs. *Id.*

¶ 5 The State's petition for an adjudication of wardship was filed on January 6, 2009. The State alleged that Rob and Carolyn failed to provide the necessary medical care for G.A.R. and that G.A.R. was a neglected minor because of an injurious environment. *Id.* at 4. After a hearing on the petition, the court found that there was probable cause to believe that G.A.R. was neglected. *Id.* at 7. The adjudicatory hearing was held on April 14, 2009. *Id.* At the end of the hearing, the trial court entered the adjudicatory order finding that G.A.R. was a neglected minor. *Id.* at 12.

¶ 6 For various reasons, including the illness of Carolyn's mother, Rob and Carolyn did not maintain regularly scheduled visits with G.A.R. and also failed to make several scheduled appointments for evaluation required under the service plan. *Id.* A dispositional hearing was held on May 26, 2009. *Id.* G.A.R. was thriving in foster care, while the parents had not completed assessments to determine what recommended services would be required. *Id.* at

12-13. The court concluded that while Rob and Carolyn were interested in the well-being of their child, they were still not able to provide appropriate care, and returning G.A.R. to his parents would be contrary to his health, safety, and best interests. *Id.* at 13. The reunification goal within 12 months was considered appropriate. *Id.* From that order, Carolyn appealed. *Id.* Rob was not a party to the previous appeal.

¶ 7 In opposition to Carolyn's arguments on appeal, we held that the trial court's orders did not rely upon hearsay medical evidence and that the record supported the State's arguments against Carolyn without need for detailed medical testimony. *Id.* at 16. Carolyn was found to have failed to administer an antibiotic, failed to bring G.A.R. to any follow-up pediatric appointments, and failed to ensure that G.A.R. received his monthly injection in December 2008 necessary to prevent RSV. *Id.* Carolyn also argued that the DCFS service plan imposed requirements that were unrelated to the reasons that G.A.R. was removed from her care. *Id.* at 20. She specifically took issue with the requirement that both she and Rob undergo psychological and substance abuse evaluations. *Id.* The caseworker testified that the psychological assessment was a critical tool to determine if the family was able to care for the child appropriately. *Id.* The substance abuse assessment was standard protocol in situations where one (or as in this case, both parents) had convictions for driving under the influence. *Id.* at 13, 20. Accordingly, even though the failure to follow through on the service plan and visitations with G.A.R. did not necessarily relate to the reasons for removing G.A.R. from the home, the evidence in total established that the trial court's ruling was correct that medical neglect was apparent. *Id.* at 21. We also held that the home environment was injurious to the health and welfare of G.A.R., affirming the trial court's ruling. *Id.* At the hearings, there was evidence that the parents exposed G.A.R. to secondhand smoke. *Id.* Additionally, there was evidence that Carolyn and Rob brought G.A.R. to stay in another home and neglected to bring G.A.R.'s crib or his prescription baby

formula. *Id.* at 21-22.

¶ 8 While the first appeal was pending in this court, between April and July of 2009, Rob and Carolyn were arrested for various crimes. Carolyn was arrested for driving under the influence, as well as other traffic-related charges, and was arrested for two instances of fraudulent activity. Rob was arrested for resisting a peace officer, various traffic offenses, fraudulent use of a credit card, and flight escape. In addition to the criminal charges during those two months, Rob and Carolyn stopped visitation with G.A.R. and would not disclose their address.

¶ 9 The couple's 10-year-old son, A.R., who was not part of this process, was found in October 2009 to be living with a person who had previously been convicted for sexually explicit behavior with a child. Based upon that setting, DCFS removed the 10-year-old boy from that home.

¶ 10 In December 2009, Carolyn admitted to a DCFS caseworker that she used intravenous drugs. The DCFS service plan dated December 7, 2009, required the parents, in part, to complete parenting classes, cooperate with medical treaters, successfully complete a mental health evaluation, successfully complete a substance abuse evaluation, provide samples for drug testing as required, and complete all required treatment, obtain and maintain a residence for six months, be willingly available for home visits, and notify DCFS of any changes of address and phone number. The caseworker noted that Carolyn was being extremely evasive about where she lived and about where Rob was living. She told the judge in court on December 3, 2009, that Rob was presently on a towboat out of St. Louis. Just one hour and 15 minutes later, after she left the Union County courthouse, she and Rob arrived together at a scheduled visit with one of their children. By way of geography and time, the caseworker was indicating that Carolyn lied to the court.

¶ 11 In March 2010, Carolyn and Rob were both arrested on federal charges of conspiracy

to distribute heroin. Carolyn was sentenced to 63 months of imprisonment. Rob was sentenced to 84 months of imprisonment. Rob is serving his sentence in a federal prison in California, while Carolyn is serving hers in West Virginia. Immediately after sentencing, Carolyn was scheduled for release from prison on October 13, 2013, and Rob was scheduled for release on June 21, 2016.

¶ 12 On July 23, 2010, the State filed a petition seeking to have Rob and Carolyn's parental rights terminated and for the appointment of a guardian with the right to consent to G.A.R.'s adoption. The parents were not able to attend the July 27, 2010, permanency hearing because they were incarcerated.

¶ 13 On August 30, 2011, the State held the fitness hearing. Neither Rob nor Carolyn attended because both were in prison. The State went forward with its evidence with the understanding that defense counsel would make contact with them after the State's presentation of the evidence in order to allow Rob and Carolyn to defend against the allegations of unfitness. The State presented evidence that Rob and Carolyn had not made efforts to comply with their service plans. The court granted defense counsel's request for a 60-day continuance in which to communicate with his clients.

¶ 14 The fitness hearing resumed on November 22, 2011. Defense counsel reported that his clients were unavailable and that he had no other witnesses. He offered two handwritten letters written by Carolyn in response to the testimony heard by the court on August 30, 2011. Attached to these letters was documentation of the programs which Carolyn completed and was involved with at that time. She had obtained a drug and alcohol assessment, participated in drug and alcohol treatment, planned on participating in additional drug and alcohol treatment, and expressed her intention to comply with the DCFS service plan upon her release. She had already completed a two-hour parenting class. Her inmate skills development plan program review showed that she had taken educational and job skills

classes and was on the waiting list for several more that were designed for her future outside of prison. She had completed a 12-hour Alcoholics Anonymous program. All exhibits were accepted by the court. Rob filed no written response to the State's allegations of unfitness.

¶ 15 In an order dated March 13, 2012, the court found that Rob and Carolyn were unfit parents based upon a failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare, a failure to protect their child from conditions within his environment that were injurious to his welfare, failure to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, and failure to make reasonable progress towards the return of the child to his parents within nine months after adjudication of neglect.

¶ 16 The best-interests hearing was held on March 13, 2012, immediately after the court entered its order finding the parents to be unfit. At this hearing, a DCFS careworker testified. G.A.R. was then four years of age. G.A.R.'s medical condition had vastly improved since his infancy, but he continued with medical care at Cardinal Glennon Hospital for vision and physical developmental delays. G.A.R. had lived with the same foster parent since his removal from Rob and Carolyn's care. The caseworker testified that G.A.R. was bonded with his foster mother. She recommended that G.A.R.'s placement remain the same. G.A.R.'s foster mother had indicated her intention to seek the right to adopt G.A.R. The caseworker had not yet completed paperwork necessary to approve an adoption request from G.A.R.'s foster mother, but anticipated that the foster mother would have no issues with DCFS approval. G.A.R. called his foster mother "mom." The foster mother also testified at this hearing. She testified that she loved G.A.R. and wanted to adopt him. At the conclusion of the testimony, defense counsel asked the court for an opportunity to consult with his clients about the evidence adduced at the best-interests hearing. This request was allowed, and court was scheduled to reconvene on April 24, 2012, with Rob and Carolyn's evidence on the best

interests of G.A.R.

¶ 17 On April 24, 2012, the attorney representing Rob and Carolyn filed a motion to withdraw as counsel, stating that he had received correspondence from Rob alleging that he was ineffective and that he wanted to appeal. The attorney argued that this presented a conflict of interest and asked that new counsel be appointed. It appears from the record sheet that the trial court did not grant counsel's motion, but instead granted another continuance. There is no transcript from the hearing. From the record sheet, it appears that all attorneys and the caseworker were present in court. The court continued the case until June 26, 2012.

¶ 18 DCFS filed a permanency report with the court on May 10, 2012. The recommended permanency goal remained substitute care pending termination of rights. DCFS explained that both parents had not worked to correct the issues in their home and that they actively denied substance abuse until they were both arrested and incarcerated.

¶ 19 On June 7, 2012, the parents' attorney filed a motion to continue stating that the trial court denied his request to withdraw from representation of the parents. He also filed a motion for a transcript of the hearing on behalf of Rob. The motion did not reference Carolyn, and the record does not contain any mention of whether transcripts were sent to both Rob and Carolyn. On June 26, 2012, the motion for transcripts and the motion to continue were granted.

¶ 20 On July 7, 2012, Carolyn filed a handwritten letter asking for the letter to be construed as a formal request for an appeal on the basis of ineffective assistance of counsel. She alleged that she had not spoken with her attorney in excess of one year, although she had made attempts to reach him. She stated, "The lack of this communication makes my ability to understand whats [*sic*] being said and & effectively defend myself & my case." She complained that receiving a letter indicating the date of the next hearing falls short of active participation. She stated that her inability to communicate and to know what was happening

in this case resulted in her not having a fair hearing. Carolyn informed the court that there were witnesses who could have testified to the health of her baby at the time he was taken from her care some four years before and about her dislike of his pediatric physician at Cardinal Glennon Hospital. She cited to this doctor's initial diagnosis that the child had epilepsy and his placement on antiseizure medication. She contended that this was inappropriate because she had already informed the doctor that she had an allergic reaction to this medication. She asked the court to have her case retried and to allow her to appeal. She stated that she had complied with every aspect of DCFS's service plan.

¶ 21 The record sheet for this case shows that transcripts were filed with the court on July 3, 2012, and July 10, 2012.

¶ 22 On August 14, 2012, the trial court denied another requested continuance.

¶ 23 On August 17, 2012, DCFS sent notifications to Rob and Carolyn to advise that they would be allowed phone visitation with G.A.R. one time per month. This represented a change due to the goals for G.A.R.—termination of parental rights.

¶ 24 The best-interests hearing resumed on August 28, 2012. Counsel for Rob and Carolyn offered Carolyn's updated certificates as evidence of her efforts in federal prison. The trial court accepted these exhibits over foundational objections, stating that "under the circumstances the ability of the Respondent to present relevant *** evidence [is not possible because she is in prison, and therefore] *** the Court should consider at least *** these four documents."

¶ 25 Counsel for the parents called the caseworker to testify. She testified that some of the classes Carolyn had taken in prison would have partially satisfied a psychological component of her service plan goals. She explained that parenting and counseling services were offered to Rob and Carolyn numerous times, that Carolyn had received two driving under the influence charges, that both parents refused mandatory drug tests, and that Rob admitted to

being under the influence as his reason for refusing a drug test and admitted heroin and alcohol use to the Union County judge in a hearing involving their older son. DCFS was not involved in the drug charges investigation of the parents. She testified that all of the services previously recommended and made part of the required service plan would still apply and have to be completed before the parents could have any visitation with their child. Prior to their incarceration, they had not been successful with any of the goals. Counsel for the parents stated to the court that he had communicated with his clients and that they had asked him to present specific arguments on their behalf. He indicated that he had no further witnesses and was ready to proceed to argument.

¶ 26 The guardian *ad litem* had no evidence to introduce. The State presented no rebuttal evidence.

¶ 27 The State argued that the best interests of the child would only be met by termination of parental rights which would allow the foster mother to follow through on her intentions to adopt this child, allowing him a permanent placement.

¶ 28 The guardian *ad litem* (GAL) for G.A.R. stated that he had spoken by telephone with Carolyn and had spoken with the child's caseworker, as well as considered applicable law. The GAL recommended termination of the parental rights of Rob and Carolyn. He commented that while currently, the parents seemed interested in preventing this process, they had not shown that level of concern when they were not in prison and had their chances to complete the service plans. The only parental figure G.A.R. knows is his foster mother. He argued that while Carolyn was scheduled to be released from prison in April 2013,¹ she would still need to spend the next two months in a halfway house, and only then could she begin the process of trying to complete her service plans. The GAL argued that it was unfair

¹Over the course of this case, Carolyn's release date changed from the original October 2013 date.

to G.A.R. to leave him in limbo after spending 3½ years in the care of his foster mother.

¶ 29 Throughout his closing argument to the court on behalf of Rob and Carolyn, the attorney made several points based upon the evidence that were specifically requested by the parents. Defense counsel touted the work that Carolyn had done, arguing that she was taking these steps to better be able to care for G.A.R. when she was out of prison. He argued that DCFS discontinued efforts to reunite the family when DCFS learned that Rob was under investigation for dealing in drugs. He argued that neglecting to make doctor's appointments for G.A.R. and missing one visiting nurse appointment should not be the basis to remove the child from their home. On behalf of the parents, the attorney argued that the child was not malnourished but that his low weight was attributable to a condition he had at birth. He argued that the parents' medical neglect was exaggerated. He finally argued that with the type and amount of classes and programs Carolyn received in prison, upon release she would likely have received enough services to satisfy the DCFS service plan.

¶ 30 At the conclusion of the second half of the best-interests hearing, the court took the matter under advisement. On October 2, 2012, the trial court entered its order terminating parental rights and appointing a guardian with the power to consent to adoption. The order reiterated that both Rob and Carolyn were unfit parents by clear and convincing evidence, before finding that it was in the best interests and welfare of G.A.R. to have the parental rights of Rob and Carolyn forever and irrevocably terminated.

¶ 31 Both Rob and Carolyn appeal.

¶ 32 **LAW AND ANALYSIS**

¶ 33 On appeal, Rob and Carolyn contend that they were denied due process in that they were denied the effective assistance from their court-appointed trial attorney. Specifically, they contend that they were not given a meaningful opportunity to be heard and defend the State's claim that they were unfit parents and that the best interests of their minor child were

served by termination of their parental rights.

¶ 34 Termination of Parental Rights and Due Process Rights

¶ 35 Termination of a parent's rights is an extreme act because a parent has a superior right to raise his or her own children. *In re Adoption of Syck*, 138 Ill. 2d 255, 274-75, 562 N.E.2d 174, 184 (1990). Once a parent has been determined to be unfit, "the parent's rights must yield to the child's best interest." *In re Tashika F.*, 333 Ill. App. 3d 165, 170, 775 N.E.2d 304, 307 (2002); *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). Up until the hearing on the best interests of the child, the interests of both the parent and the child coincide "to the extent that they both 'share a vital interest in preventing erroneous termination of their natural relationship.'" *In re D.T.*, 323 Ill. 2d 347, 363, 818 N.E.2d 1214, 1226 (2004) (quoting *Santosky v. Kramer*, 455 U.S. 745, 760-61 (1982)). The State bears the burden of proof by a preponderance of the evidence that termination of a parent's rights is in the child's best interests. 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 36 The factors considered by the trial court in deciding the best interests of the child were the child's physical safety and welfare, the child's background and ties (including family, culture, and religion), the need for permanence, including familiarity, stability, and continuity with parental figures and other relatives, risks related to substitute care, and preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010); *In re Deandre D.*, 405 Ill. App. 3d 945, 953-54, 940 N.E.2d 246, 253-54 (2010). The likelihood of adoption is an appropriate factor to be considered in a best-interests-of-the-child determination. *In re Tashika F.*, 333 Ill. App. 3d at 170, 775 N.E.2d at 308. The court may also consider the length of the child's relationship with his present caretakers as well as the emotional and/or physical effect of a change of placement on the well-being of the child. *In re Brandon A.*, 395 Ill. App. 3d 224, 240, 916 N.E.2d 890, 904 (2009) (citing *In re Austin*

W., 214 Ill. 2d 31, 50, 823 N.E.2d 572, 584 (2005)).

¶ 37 The parent's interest in maintaining a parental relationship with his or her child is a "fundamental liberty interest protected by the due process clause of the fourteenth amendment." *In re C.J.*, 272 Ill. App. 3d 461, 464, 650 N.E.2d 290, 293 (1995) (citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982)). Illinois law further provides that a parent has a right to be present when the State is seeking to terminate parental rights. 705 ILCS 405/1-5(1) (West 2010). However, case law has established that if the parent is incarcerated, the parent has no absolute right to be present at a termination of rights hearing, as those who are incarcerated no longer have many of the rights and privileges of those of the general public. *In re C.J.*, 272 Ill. App. 3d at 465, 650 N.E.2d at 293 (citing *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)).

¶ 38 The constitutional due process rights afforded a person are not fixed in specific content. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (citing *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)). Because due process is flexible and dependent upon the particular demands of the situation, in order to determine if the administrative procedures provided are constitutionally appropriate, we must analyze the governmental and private interests affected. *Id.* The United States Supreme Court has established three criteria to determine if procedures undertaken in a parental termination case satisfy the requirements of due process. *Id.* The first is the private interest that would be affected by the official action. *Id.* at 335. The second is the risk of erroneous deprivation of such interest through the procedures used, coupled with the value, if any, of substituted procedural safeguards. *Id.* The third component in this balancing test is the government's interest including the function involved and the monetary and administrative burdens that additional procedural requirements would require. *Id.*

¶ 39 In this case, the first element of the *Mathews v. Eldridge* balancing test was clearly met. The private interest affected was the liberty interests of Rob and Carolyn in maintaining their parental relationships with G.A.R.

¶ 40 The second element of the *Mathews v. Eldridge* balancing test requires this court to analyze what steps the court took to assess the risk that the procedures utilized deprived the parents of their due process rights. Due process is a fundamental right which allows a party the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* at 333. If the parent is incarcerated, and thus, unable to be present at the parental termination hearing, the parent must be afforded the opportunity to participate in the proceeding in a meaningful manner. *Id.* If participation in a meaningful manner takes place, the due process rights afforded the parent have been satisfied. *Id.*

¶ 41 The question in analyzing erroneous deprivation of due process rights is what constitutes "meaningful participation" in a parental rights case. Clearly, it does not require that the parent be present at all hearings. *In re C.J.*, 272 Ill. App. 3d at 466, 650 N.E.2d at 293.

¶ 42 In the case of *In re C.J.*, the appellate court held that C.J.'s mother was deprived of her due process rights, and it reversed the order terminating her parental rights. *In re C.J.*, 272 Ill. App. 3d at 466, 650 N.E.2d at 294. She was not present at any of the hearings because she was in prison. *Id.* On May 17, 1994, the mother filed a motion to continue the termination hearing which was set for July 1994, alleging that she wanted to contest the petition. *Id.* at 463, 650 N.E.2d at 292. She asked for a continuance of one year because she was scheduled for release from prison on May 1, 1995. *Id.* Alternatively, she asked the court to continue the case at the close of the State's case so that she could review a transcript of the hearing and respond accordingly. *Id.* The court denied the mother's request for a continuance, and the case proceeded to the termination hearing as scheduled. *Id.*

Throughout the parental rights case involving C.J., the mother was represented by counsel who appeared at all hearings and cross-examined each of the State's witnesses. *Id.* at 464, 650 N.E.2d at 292. At the best-interests hearing, the defense attorney provided the court with a copy of a letter written by the mother prior to the hearing in which she stated that she did not want to relinquish her parental rights. *Id.* The court held that the procedures used by the court, or the lack thereof, resulted in a deprivation of the mother's parental rights. *Id.* at 466, 650 N.E.2d at 294. Turning to the third component of the due process evaluation, the court found that the government would not have been unduly burdened to provide the mother with a better opportunity to present evidence at the termination hearing. *Id.* The court held that while the mother had no absolute right to be present at the termination hearing, case law from other states set forth steps to ensure meaningful participation in the hearing. *Id.* at 465, 650 N.E.2d at 293 (citing *In re Randy Scott B.*, 511 A.2d 450 (Me. 1986) (the parent's evidence deposition was taken and admitted at the termination hearing); *In re L.V.*, 482 N.W.2d 250 (Neb. 1992) (the parent participated in the hearing by telephone); *In re Juvenile Appeal*, 446 A.2d 808 (Conn. 1982) (after the State rested, a continuance was granted, a complete transcript was given to the parent, and the parent testified during the hearing by telephone)).

¶ 43 In a slightly more recent case, *In re M.R.*, the court held that a mother's due process rights were not violated by her lack of presence at the hearing when her parental rights were terminated. *In re M.R.*, 316 Ill. App. 3d 399, 736 N.E.2d 167 (2000). The mother in this case had psychiatric problems and had a long history of psychiatric hospitalizations. *Id.* at 401, 736 N.E.2d at 168. She was hospitalized on the date of the termination hearing. *Id.* The duration of her hospitalization was characterized as "unknown." *Id.* at 400, 736 N.E.2d at 168. On the date of the termination hearing, defense counsel sought a continuance due to the mother's hospitalization. *Id.* The trial court denied the request for a continuance. *Id.* at 400-01, 736 N.E.2d at 168. The court held that the procedures used by the trial court offered

little to no risk of improper deprivation of the mother's interests. *Id.* at 402, 736 N.E.2d 169.

The court stated:

"Although respondent was not present at the termination hearing, in light of the testimony as to respondent's psychiatric conditions, respondent's attorney likely represented the interest of respondent to the best degree possible." *Id.*

The court distinguished its case from *In re C.J.* in that the requested continuance was of an unknown duration, whereas the mother in *In re C.J.* had requested continuance based on a specific period of time. *Id.* at 403, 736 N.E.2d at 170. The court also faulted the mother's attorney for failing to offer the court an alternative to a continuance of unknown duration. *Id.* at 404, 736 N.E.2d at 170.

¶ 44 Having considered the parents' arguments on appeal, along with the relevant law, we find that Rob and Carolyn had meaningful participation in the termination hearing. The court separated the fitness hearing into two parts. In the time allowed between the first half and second half of the fitness hearing, Carolyn filed a detailed written response to the allegations from the first hearing. The best-interests hearing was also broken into two separate hearings in order to allow counsel to provide information to his clients and obtain their input. Additionally, the court granted other continuances throughout the process to allow counsel the time to consult with his clients. From the arguments of counsel at the best-interests hearing, we know that defense counsel, the GAL, and Carolyn spoke by phone about the case. The record reflects that defense counsel sought a continuance in order to obtain transcripts of the best-interests hearing, as well as other hearings held earlier in the case. We cannot tell from the record if both Rob and Carolyn received copies of the transcripts. Carolyn provided an updated inmate skills development plan program review detailing educational classes taken during her incarceration and additional certificates of programs completed while in prison. Defense counsel recalled the caseworker to testify in the second

half of the best-interests case, asking her about bias towards the parents and about Carolyn's completion of classes. We also know from defense counsel's argument in the trial court that he had spoken to or otherwise communicated with Rob and Carolyn about their case and about the best-interests hearing. The attorney explained to the court that many of the arguments he was making were the results of specific requests from Rob and Carolyn. Rob and Carolyn had representation at all stages of this case.

¶ 45 This case is distinguishable from *In re C.J.* in a few important respects. In *In re C.J.*, the court denied the mother's request for a continuance—either for one year until she was to be released from prison or after the close of the State's case. *In re C.J.*, 272 Ill. App. 3d at 463, 650 N.E.2d at 292. She was not allowed the opportunity to obtain a transcript and to respond to the evidence presented. *Id.* The only documentation from the mother that was submitted to the court was a letter she wrote immediately after the State filed a petition to terminate. The court held that the mother did not have a meaningful participation in the case. *Id.* at 465-66, 650 N.E.2d at 293-94. In this case, the court granted the requested continuances and allowed substantial time after the State rested before resuming the defense halves of the hearings on the petition to terminate parental rights—the fitness hearing and the best-interests hearing. Carolyn responded to the allegations of the fitness hearing. Transcripts of the best-interests hearing were made available to Rob, and possibly to Carolyn. Carolyn updated her documentation and submitted that to the court before the second half of the best-interests hearing. Rob had similar opportunities, but as far as we are able to tell from the record, he chose not to submit documentation detailing his efforts while in prison. Additionally, defense counsel was in communication with the clients and made every argument to the court that they requested. The continuances in this case provided Carolyn and Rob with the opportunity to communicate with counsel and the court about the hearings to be held. If the opportunities were not utilized by the parents, they should not

benefit from taking no action and arguing that they were denied meaningful participation. Accordingly, we hold that given the facts of this case, Rob and Carolyn were provided meaningful participation in this case.

¶ 46 The third element of the *Mathews v. Eldridge* balancing test requires us to look at the public component—the government's interest in the process and monetary and/or administrative burdens which would be incurred if extra procedural requirements were mandated. The government's status in seeking to terminate parental rights is that of *parens patriae*—the government has the power and duty to ensure care for the minor, G.A.R. If the child at issue is young, delay in adjudication of his or her status is not beneficial to the establishment of a stable permanent environment for the minor and imposes a serious cost on government function. *In re C.J.*, 272 Ill. App. 3d at 466, 650 N.E.2d at 293 (citing *In re Juvenile Appeal*, 446 A.2d at 813). The delay results in damage to the lives of the minor children which is intangible and serious. *In re M.R.*, 316 Ill. App. 3d at 403, 736 N.E.2d at 169.

¶ 47 In this case, the public component is compelling. The minor, G.A.R., was removed from the custodial care of his parents when he was six months of age. At the time of the best-interests hearing, he was four years of age. Given the 3½ years in a temporary environment, G.A.R. is more than entitled to permanency of care. Accordingly, we find that the third *Mathews v. Eldridge* element was satisfied.

¶ 48 We conclude that the three components of the *Mathews v. Eldridge* balancing test were met and that Rob and Carolyn were not deprived of their constitutional due process rights in the parental termination hearings.

¶ 49 Ineffective Assistance of Counsel

¶ 50 Section 1-5 of the Juvenile Court Act of 1987 provides the right to an attorney in a parental rights case. 705 ILCS 405/1-5(1) (West 2010). The case that set forth the method

for evaluating defense counsel's performance in a criminal case is *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In Illinois, the *Strickland* standard is applied in parental rights cases. *In re S.G.*, 347 Ill. App. 3d 476, 479, 807 N.E.2d 1246, 1248 (2004). Constitutionally competent assistance is measured by a test of whether the defendant received "reasonably effective assistance." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The *Strickland* standard has two components. The defendant must establish that defense counsel's performance was deficient. *Id.* Secondly, the defendant must show that the deficient performance prejudiced his defense. *Id.* at 693. The prejudice required is actual prejudice, and not mere conjecture that the outcome would have been different. *People v. Olinger*, 176 Ill. 2d 326, 363, 680 N.E.2d 321, 339 (1997). Both prongs of the *Strickland* test must be satisfied. *People v. Patterson*, 192 Ill. 2d 93, 107, 735 N.E.2d 616, 626 (2000).

¶ 51 Deficiency requires the parents to overcome a presumption that the challenged actions or inactions were the product of sound trial strategy. *People v. Simms*, 192 Ill. 2d 348, 361, 736 N.E.2d 1092, 1106 (2000); *People v. Coleman*, 183 Ill. 2d 366, 397, 701 N.E.2d 1063, 1079 (1998).

¶ 52 To prevail on an ineffective-assistance-of-counsel claim, "[the] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Lefler*, 294 Ill. App. 3d 305, 311, 689 N.E.2d 1209, 1214 (1998) (citing *Strickland*, 466 U.S. at 694). The term "reasonable probability" has been defined to mean "a probability sufficient to undermine confidence in trial's outcome." *Id.* at 311-12, 689 N.E.2d at 1214 (citing *Strickland*, 466 U.S. at 687); *In re A.R.*, 295 Ill. App. 3d 527, 531, 693 N.E.2d 869, 873 (1998).

¶ 53 With respect to the parents' claim that their attorney's performance was deficient in that they did not have meaningful participation in the termination hearings, we have already

concluded that Rob and Carolyn had meaningful participation and therefore their attorney's efforts in that regard were effective.

¶ 54 Rob and Carolyn argue that the outcome would have been different if their attorney had "introduced witnesses to corroborate their assertions as to evidence of their efforts to complete services, their relationship with their child, and their efforts to correct conditions adverse to the minor." They do not state who these witnesses would be and what the content of their testimony would be. We fail to see how any testimony would have been able to refute the DCFS evidence that neither Rob nor Carolyn had made much, if any, efforts in 3½ years to complete any service plan. The arguments advanced on the prejudice prong of the *Strickland* test are nothing more than speculative.

¶ 55 Accordingly, we find that the parents did not establish ineffective assistance of counsel.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, the October 2, 2012, judgment of the circuit court of Hardin County terminating the parental rights of Rob and Carolyn to G.A.R. is hereby affirmed.

¶ 58 Affirmed.