

NOTICE
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2015 IL App (5th) 150293-U

NO. 5-15-0293

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).

<i>In re</i> B.J.V., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Union County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 13-JA-7
)	
Kala V.,)	Honorable
)	Charles C. Cavaness,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Where Kala V.'s due process rights were not violated, and she was not provided inadequate assistance of counsel, we affirm the trial court's order terminating her parental rights.

¶ 2 Kala V. appeals from the trial court's order terminating her parental rights. On appeal, she argues that the State violated her due process rights by not serving her with notice of the termination hearing, by failing to explore "relative placement," and by failing to comply with statutory guidelines for the times and types of hearings held. She also argues that both her attorney and the attorney appointed as B.J.V.'s guardian *ad litem*

were ineffective in their assistance. We affirm the trial court's order terminating Kala's parental rights.

¶ 3

FACTS¹

¶ 4 B.J.V. is a male child born on January 30, 2013. He has an older brother, S.K.V., born on November 28, 2010. Kala is the mother of both boys. Kala's husband, Donald Kyle V., is the father of both boys.²

¶ 5 Before B.J.V.'s birth, the Department of Children and Family Services (DCFS) investigated Kala and her husband. On January 20, 2012, DCFS received a report that resulted in an investigation involving S.K.V. On that date, Kala's father reported that she and Kyle had a fight at about 2 a.m. Kyle left with the baby, S.K.V. Police then responded to a call about Kala and arrived at Kyle's grandmother's home in Jonesboro. They removed Kala from the house and took her to jail. At the jail, Kala fell and was

¹This case, 5-15-0293, is the companion to 5-15-0294, involving the court's termination of Kala's parental rights to S.K.V., B.J.V.'s natural sibling. The record of each case is incomplete. In the appellate briefs, Kala's attorney acknowledges that the only way to have a complete factual record is to use both records. The State does not object to using both records. Having reviewed the records on appeal, we agree with counsel's assessment. In order to have a cohesive factual background in this order, we will utilize both records.

²Although we include factual references to Kala's husband, Kyle, for completeness, Kyle is not a party to this appeal.

then taken to an emergency room. Kala's father took her to his home after the hospital released her. Later that morning, Kala's father found her in her room with a needle "trying to shoot up in her hand." Kala's father called police and they arrested Kala. DCFS documents indicate that Kala and Kyle were investigated as having put S.K.V. at substantial risk of physical injury, maintaining an environment injurious to his health and welfare, and providing inadequate supervision. Additionally, DCFS was investigating reports of domestic violence and substance abuse. DCFS determined that the report was well-founded. While DCFS was involved in this incident, S.K.V. remained in Kala's custody. The caseworker noted that Kala was working with a family support specialist on parenting and discipline skills; she and Kyle were separated (due to a court order of no-contact against Kyle); Kala's stress levels were reduced because she was no longer living with Kyle; and she was pregnant with another child. The caseworker believed that the separation allowed Kala to be a better parent to S.K.V. From the record, it appears that DCFS closed the case on September 7, 2012.

¶ 6 Kala and her children came to the attention of DCFS again in April 2013. DCFS filed an integrated assessment dated May 28, 2013, with the court. The report contains the following information: On April 16, 2013, Kala took her infant, B.J.V., to the Southern Seven Health Department in Jonesboro for a well-baby check. A friend accompanied Kala. B.J.V. was then two months old. According to workers at the health department, Kala looked and behaved as if she was under the influence of drugs. Her pupils were pinpoint-sized; she was agitated and confused; and alternately yelled and cursed, cried, and then apologized for her behavior. Kala's friend also appeared to be

under the influence. The staff asked Kala to submit to a blood draw, apparently to determine if illegal drugs were present in her system. Kala refused. The health department called the local police department. The police who responded to the call allowed Kala to leave after she secured alternate transportation.

¶ 7 A DCFS investigator, Marci Malnar, conducted a home visit later that same day. The visit lasted two hours. The home visit began about one hour after Kala and B.J.V. left the health department. Malnar noted that Kala seemed agitated and was not making verbal sense. Throughout the visit, Malnar noted that Kala seemed oblivious to her children. Kala calmed down when her husband's grandmother arrived at the house.

¶ 8 When Malnar arrived at Kala's home, B.J.V. was still in his infant car seat with the car seat cover zipped closed. When Malnar asked where the baby was, Kala pointed to the car seat. Kala unzipped the cover to reveal B.J.V., but did not remove him from the car seat. Malnar asked her to undress B.J.V. so that she could weigh him. Kala refused, stating that she was too tired. Malnar weighed B.J.V. At birth, B.J.V. weighed in the 50th percentile of weight for his age. On April 16, 2013, B.J.V. was at the 9.9th percentile of weight for his age. There was no baby formula in the home.

¶ 9 S.K.V. was then one year and five months of age. S.K.V. was observed running around the house in his diaper, and was observed handling various objects—a door stop, empty medicine bottles, and candle holders—in manners that Malnar found to be unsafe and/or behaviorally inappropriate. Kala did not correct S.K.V.'s behavior. At one point during the home visit, Malnar observed S.K.V. pick up a piece of food from the living room floor and begin to eat it. Kala took no action, so Malnar took the food away from

S.K.V. Kala claimed that her somewhat erratic behavior was the result of her bipolar disorder and had nothing to do with drug usage.

¶ 10 During the visit, Kala's husband, Kyle, came downstairs. Malnar said that he did not appear to be under the influence, and that he seemed rational and coherent. He fed S.K.V. and then left to go obtain infant formula for B.J.V. at a store.

¶ 11 Malnar determined that she needed to administer a drug test to Kala because of her behavior earlier in the day at the health department as well as during the home visit. She told Kala that she needed to test her. However, Malnar did not have any drug test kits with her, and so she called another DCFS investigator, Michelle Dirden, to bring a drug test to Kala's home. In the meantime, Kala excused herself to the bathroom. Upon Dirden's arrival with the test kit, Kala advised that she was unable to provide a urine sample. Upon Kyle's return to the home, Malnar asked him to submit to a urine drug test. Kyle refused to take the drug test, citing concerns that his methadone prescription would result in a positive test result.

¶ 12 Before Malnar left Kala and Kyle's home, she prepared a DCFS safety plan. DCFS instructed Kala that she could not be left alone with the children; that she needed to attend a scheduled mental health counseling appointment on April 18, 2013; and that both parents needed to complete drug testing. Malnar specifically told Kala and her husband that she would be visiting the home to check on the children every day. The next day, Malnar attempted to locate Kala and the children. No one was at home. Malnar made several attempts in the next couple of days. Kala and the children were never at home. Kala did not attend her April 18 counseling appointment. Instead, she

called into the center and demanded a different counselor. Neither Kala nor Kyle completed the required drug test.

¶ 13 Also within this two-day time frame after the home visit, Kyle paid a visit to his grandmother in the middle of the night. Kyle's grandmother informed Malnar that Kyle showed up at her home demanding \$200 so that he could get a preemployment drug test to establish that he was not using drugs. The grandmother was frightened by his behavior and gave him the money. She told Malnar that she believed he used the money to buy heroin—citing a fight between Kala and Kyle that a neighbor overheard during which Kala accused Kyle of using more than his share of \$1,000 worth of heroin.

¶ 14 Two days after the home visit, Kala's mother saw Kala and Kyle at a local Dollar General store. She took B.J.V. from Kala and then contacted DCFS. Malnar placed B.J.V. in protective custody with Kala's mother. Malnar continued to try to find S.K.V. Someone told Marci that Kala and Kyle were staying at a local motel. Malnar believed that they were staying at the motel in order to evade further home visits. Kala later told DCFS that she and Kyle went to the motel in order to get away from her drug-using friends.

¶ 15 On the morning of the third day after the home visit, one of Kala's friends stopped Union County Sheriff's Officer Asa Busby. Officer Busby was with DCFS investigators attempting to locate Kala, Kyle, and S.K.V. Kala's friend had S.K.V. with her, and told the officer that she feared for his safety. She also told Officer Busby that Kala and Kyle were staying at a local Super 8 motel, were having "domestic disputes," and were both using heroin. Kala's friend had taken S.K.V. home with her at about 2 a.m. The next

morning, Kala showed up at her friend's home to retrieve S.K.V., but the friend refused to release him to Kala's care. DCFS took S.K.V. into protective custody, and placed him with Kala's mother.

¶ 16 Later the same day, when Kala's mother reached into B.J.V.'s diaper bag to retrieve supplies, she discovered needles and other suspected drug paraphernalia. Kala later informed DCFS that the drug items did not belong to her, but belonged to a friend.

¶ 17 Kala's mother had custody of both minor children for three days, after which she contacted DCFS and asked DCFS to remove the children from her care.

¶ 18 The State filed a petition for wardship and conducted an *ex parte* shelter care hearing on April 19, 2013. The court appointed a guardian *ad litem* (GAL) to represent both minor children. The State filed several related documents—"Notice of Rights for Respondents in Juvenile Court Proceedings," "Motion for Shelter Care Hearing," and "Notice of Parent's and Children's Rights to Rehearing on Temporary Custody." None of the documents bore a return of service indicating that Kala or Kyle were served. However, the orders note that Kala "has received notice and is not present." At the shelter care hearing, a DCFS investigator testified that the parents were personally informed of the date and time of the hearing.

¶ 19 At the conclusion of the hearing, the court entered an *ex parte* temporary custody order granting custody and guardianship of the minor children to DCFS. In this order, the court found probable cause for the custody orders due to drug abuse and domestic violence issues in the minors' home. The court found that there was an immediate and urgent necessity to remove the minors from the home. The court also noted that the

parents agreed to a safety plan, but they failed to comply with its terms. The court order addressed visitation with the parents, and established rules that visitation would be supervised by DCFS and there would be no visitation unless each parent passed a drug test on every scheduled visitation date. The court appointed attorneys to represent Kala and Kyle. The court set the cases for status on May 9, 2013.

¶ 20 At the May 9, 2013, status hearing, Kala's court-appointed attorney filed an entry of appearance, a motion for discovery, and a motion to set aside the temporary custody order on the basis that Kala did not receive timely notice of the hearing. The court reset the status hearing at the agreement of all parties to May 23, 2013. Before that date, the GAL appointed to represent the minors, withdrew from the appointment because there was a conflict. The court appointed a new GAL.

¶ 21 DCFS interviewed Kala in preparation of the integrated assessment provided to the court. DCFS integrated information from the 2012 investigation into its 2013 assessment. In 2012, Kala informed DCFS caseworker, Janelle Pulcher, that she had a longstanding history of mental health issues. In addition to attention deficit hyperactivity disorder, she informed Pulcher that she suffered from anxiety, depression, and bipolar disorder. Two DCFS employees conducted Kala's 2013 interview and described her verbal behavior as confused and distracted. At times, they could not follow Kala's narrative. Both caseworkers described numerous examples where Kala would make one statement, and then contradict herself. Kala talked very rapidly, and was at times unintelligible. The caseworkers also noted that Kala would switch topics midsentence. Kala admitted to drinking alcohol and smoking marijuana, but denied any involvement

with heroin or other illegal drugs. When asked about the 2012 arrest when her father caught her attempting to shoot up, she stated that her father fabricated this story in order to "get her help."

¶ 22 On June 4, 2013, DCFS filed a service plan for Kala. The permanency goal was to return the children home within 12 months. The boys were placed in separate foster homes, and DCFS was arranging sibling visits until one home could be located for both boys. S.K.V. was found to have developmental delays in all areas—speech, personal and social development, gross and fine motor skills, and problem solving. The records do not contain a similar assessment for B.J.V. There were numerous "desired outcomes and action steps" mandated by DCFS with a target completion date of November 29, 2013.

Kala was required to cooperate and complete the following:

- (1) parenting training;
- (2) participation in a domestic violence screening;
- (3) abstention from substance abuse;
- (4) completion of a substance abuse assessment;
- (5) cooperation with recommended substance abuse services;
- (6) submission to random drug tests;
- (7) participation in a psychiatric assessment;
- (8) provision of signed consents to release integrated assessment to service providers; and
- (9) participation in all psychiatric recommendations.

¶ 23 On June 13, 2013, the minor children were placed together in one home. They remain with this same family.

¶ 24 The court held the adjudication of wardship hearing on July 11, 2013. While it is unclear from the record whether the court ruled on Kala's motion to set aside the temporary custody order, Kala appeared in court and admitted several of the State's allegations. Kala admitted that B.J.V.'s weight dropped since birth; that there was no infant formula in her home on April 16, 2013; that she appeared to be under the influence that date and was not paying attention to her children during the home visit; that she was aware of the DCFS safety plan; that she avoided DCFS workers; and that she had previous DCFS involvement for domestic violation and inadequate supervision.

¶ 25 The July 30, 2013, DCFS dispositional report, dated July 30, 2013, provided insight into Kala's progress. Kala tested positive for drugs on May 3 and May 31, 2013. She tested negative for drugs on June 7, 14, and 21, and July 19, 2013. Kala had car trouble on July 5, 2013, and missed that visitation. The July 12, 2013, visit was canceled because DCFS had a scheduling conflict. On July 29, 2013, Kala tested positive for drugs. Kala attended some, but not all of her mental health counseling sessions. She attended a substance abuse assessment, but did not provide the records requested in order to allow for continued counseling. Kala was unemployed and did not have her own residence. Kala was living either with her mother or with her father. At her visitations with both children, Kala reported difficulties with paying attention to both children. DCFS reported that B.J.V. had gained weight in foster care, and that he was back up to

the 50th percentile for weight at his four-month check. S.K.V.'s speech and motor skills were noticeably improved since his initial assessment.

¶ 26 The dispositional hearing began on August 8, 2013. Kala appeared in court with her attorney. The hearing finished on September 5, 2013. On September 5, Kala did not appear.

¶ 27 The court entered adjudicatory orders on September 20, 2013, in both cases. The orders state that the mother had not been served with summons, but was present. The minors were adjudicated as "abused or neglected" in that they were in an "environment that is injurious" to their welfare. The court found that both parents were responsible for the abuse or neglect because of the injurious environment in which the children were living.

¶ 28 The trial court also entered dispositional orders on September 20, 2013. The court found that Kala was unfit to care for the minors because of her involvement in a relationship marred by domestic violence in the minors' presence, that she had not been providing the minors proper nutrition, and that she had been involved in drug use while caring for the minors. The order stated that the goal was to keep the family intact, but that Kala and Kyle avoided their caseworkers and were not engaged in recommended services. The court granted the petition, adjudicated the minors as neglected, made the minors wards of the court, and continued custody with the DCFS guardianship administrator.

¶ 29 DCFS filed its permanency hearing report with the court in late September 2013. This report was based upon Kala's most recent service plan. DCFS's actions goals for

Kala remained the same. Kala's progress was poor because she had not fully cooperated with any of the recommended services. DCFS reported that Kala was scheduled for a drug test on September 25, 2013, but that her urine sample did not meet the required temperature reading. Kala attended some mental health counseling sessions, but her attendance was sporadic. In early September, Kala contacted DCFS to advise that she had obtained a residence, but that she did not know the address. Kala left two messages, but was not available when DCFS returned the calls. Parenting classes could begin if DCFS approved her new residence. Kala had participated in 6 of 16 scheduled visits with her boys. She missed most of the visits because she tested positive for drugs. She missed one visit because she was incarcerated for possession of drug paraphernalia. She also missed another visit when she failed to comply with agency rules about confirmation of a scheduled visit. DCFS's permanency goal remained the same—to return the children home within 12 months. Both boys continued to show dramatic improvement in their foster home.

¶ 30 On October 24, 2013, the court held a permanency hearing. Kala did not attend the hearing. The order entered stated that the permanency goal to return the children remained the same, but the court noted that Kala was not cooperating with offered services. Custody was continued with DCFS.

¶ 31 DCFS filed the next permanency hearing report in January 2014. The recommended services for Kala remained the same. DCFS reported that Kala had not fully cooperated with the services. Kala tested positive for drugs on October 9, 2013, and on December 27, 2013. Kala had no visits with her boys from October 19, 2013, through

December 27, 2013. DCFS was unable to conduct random drug tests on Kala because the address she provided DCFS did not exist and Kala would not respond to phone calls. Kala was scheduled to be admitted to Union County Hospital for a mental health evaluation in October 2013, but she refused. The counselor, Cheryl Baker, spoke with Kala's father, who reported that Kala was admitted to a hospital around December 18, 2013, but he did not know the name of the facility. Kala's only communication with the caseworker was when she left a message on December 12, 2013, reporting that she was not going to her scheduled visit because "she was instructed by the Anna Police Department to leave the state under a local 'witness protection program' as her life was being threatened." DCFS contacted the Anna Police Department, and learned that this story was false. Officer Tim Smith reported that he was familiar with Kala because she had a long history of drug-related issues. The report also contained information from Kyle's grandmother, Janet. She informed DCFS that both Kala and Kyle told her that they had to pay for the drug tests prior to visitation. Janet gave Kala and Kyle "drug test" money every week. DCFS advised Janet that there was no expense associated with the required drug tests. Janet stated that Kyle was living with her, and that Kala visited him frequently.

¶ 32 The court held a permanency hearing on January 9, 2014. Kala was present at the hearing. The court filed its permanency order on April 24, 2014. The court indicated that Kala and Kyle were not making reasonable and substantial progress towards reunification. Custody was continued with DCFS.

¶ 33 DCFS prepared the next service plan on March 26, 2014. The caseworker assigned to Kala's cases was Nannette Evans. DCFS had not had any contact with Kyle since September 2013. Evans noted that she did not have an address for Kala. Kala was admitted to a psychiatric hospital in December 2013, but she had not followed through with proper and consistent use of her prescribed medications and had been inconsistent with mental health counseling. Officer Busby with the Union County Sheriff's Department contacted DCFS to advise that Kala requested treatment at Fellowship House after she was allegedly kicked out of her father's home. He transported Kala to the facility, but she refused inpatient treatment. The date of this incident was not listed in the report. DCFS later referred Kala to Fellowship House for an assessment on February 28, 2014. She did not complete the assessment because she refused to take a drug test. Kala did not show at the next assessment date of March 17, 2014. Kala was again living with her father. Kala continued to have sporadic visits with her children. Kala's required "action steps" remained the same. Evans evaluated her progress as unsatisfactory. Evans reported that both boys continued to thrive in foster care.

¶ 34 DCFS filed a permanency report with the court on June 5, 2014. Kala had not fully cooperated with any services. DCFS found that Kala had not made reasonable efforts in services. DCFS recommended that the court change the goal to substitute care pending the court's determination on termination of parental rights.

¶ 35 On July 24, 2014, Kala's attorney filed a motion with the court to continue the hearing. In the motion, Kala's attorney reported that Kala had successfully completed inpatient treatment at Fellowship House in June, continued to participate in outpatient

care, was living with her mother, and had severed all ties with people involved with "troublesome activity" in her past.

¶ 36 DCFS prepared a new service plan in late September 2014. DCFS reported that Kala was arrested in April 2014 for criminal trespass to a residence and possession of drug paraphernalia. The report also contained the information about Kala's Fellowship House stay, and reported that she was working with a substance abuse counselor and attending Alcoholics Anonymous meetings weekly. She was on a wait list to see a psychiatrist and to obtain mental health counseling. She was living in a basement apartment at her mother's house and was paying her mother \$300 per month as rent. She worked at a Kentucky Fried Chicken restaurant in Anna. She reported that she was no longer in contact with Kyle. DCFS reported that Kala maintained regular visits with her sons since July 18, 2014. Although Kala had begun participating in services, DCFS noted that it would take time to demonstrate sustained sobriety and to complete all services. DCFS evaluated Kala's progress towards her permanency goals as unsatisfactory. Both boys continued to do well with foster care, and the foster parents expressed their desire to adopt both boys if given the opportunity to do so.

¶ 37 A new caseworker, Patricia Owens, prepared a status report on November 11, 2014. Since November 3, 2014, Kala's visitation with her boys occurred in her apartment. Kala was on the waiting list for parenting classes. Kala was also on the waiting list for a psychiatrist and for mental health counseling. DCFS recommended that Kala undergo a psychological evaluation to determine if she was able to parent children while sober. Kala had not completed this psychological evaluation. Kala believed that

her divorce from Kyle would be finalized in December. Owens was also working with Kyle, who continued to struggle with sobriety and with maintaining consistency with his programs. Kyle told Patricia on October 7 that he and Kala had agreed to start dating again. Kala denied this statement.

¶ 38 In February 2015, DCFS prepared a permanency hearing report. The following information is from this report: Kala reported to Owens that she continued to follow up with aftercare for drug addiction. However, Owens learned that Fellowship House discharged Kala because she stopped attending meetings in December. An employee at Fellowship House reported that Kala became engaged to Brandon B. on February 14, 2015, after he was discharged from the prison in Centralia. Kala had not reported this relationship to Owens. Owens reported that Brandon B. was the father of a young boy who was a ward of the state, and that Brandon was not cooperative with DCFS.

¶ 39 Kala was no longer living in her mother's home and claimed that she was living with her sister. Kala would not provide Owens with her sister's address, claiming that sister prohibited her from giving out that information. On February 4, 2015, Kala refused a drug test. The parenting program representative could not locate Kala. Kala reported that she quit her job.

¶ 40 The report also detailed DCFS's ongoing efforts to obtain mental health treatment for Kala. DCFS appointed a mental health counselor to work with her, but the counselor was not able to contact Kala. A psychological evaluation was set for February 2, 2015, but again Kala could not be found. DCFS sent her two letters notifying her of that appointment, and then Patricia told her in person on January 22, 2015. Kala missed the

appointment. Kala missed two mental health appointments. Her visits with her children were described as "difficult."

¶ 41 Finally, the report provided information about Kala's interaction with her children during visitations and at their doctors' appointments. DCFS provided her with dates and times of her sons' medical appointments. She attended one, and missed all others. During scheduled visitations, Kala was unable to manage the behaviors of her children and told the caseworker that she was "stressed out." Her last scheduled visit with the boys was on February 5, 2015. Kala reported to the caseworker that she was legally blind and could not care for the boys. A representative of the parenting program was there, and called in an aide to assist Kala.

¶ 42 The trial court entered permanency orders on February 24, 2015. The court found that Kala had made reasonable efforts, but not substantial progress, towards the return of her sons. The permanency goal remained the same—to return the children home within 12 months.

¶ 43 On March 17, 2015, the State filed a motion for change of goal in both cases. The State alleged that neither parent had made reasonable efforts or progress to achieve the goal of family reunification within 12 months. The State further alleged that changing the goal to substitute care pending court determination on termination of parental rights was in the best interests of the minors. On that same date, the State filed a motion for termination of parental rights and for appointment of a guardian with power to consent to adoption in each case. The State alleged that Kala and Kyle were unfit because they failed to maintain a reasonable degree of interest, concern, or responsibility as to the

welfare of the minors; they deserted the minors for more than three months; they failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors during any nine-month period following the adjudications of neglect; and they failed to make reasonable progress towards the return of the minors during any nine-month period following the adjudications of neglect.

¶ 44 On March 26, 2015, Kala appeared in court. The court entered permanency orders changing the goal to substitute care pending the hearing on the State's petition to terminate Kala's parental rights.

¶ 45 On April 30, 2015, the trial court held its hearing on the first and second stages of termination of Kala's and Kyle's parental rights. Neither parent appeared in court. Both were represented by counsel at the hearing. The trial court found that both parents were unfit. In the second stage, the trial court found that the minors' best interests would be served by terminating parental rights. The court noted that both minors had developed attachments to their foster parents in the two years of placement. The foster parents wanted to adopt the boys. The court found that the brothers had a right to permanence. The court changed the goal to substitute care pending adoption.

¶ 46 On June 4, 2015, DCFS filed its permanency orders with the court in which it recommended adoption for the minors.

¶ 47 On June 18, 2015, the trial court entered the formal order finding that Kala and Kyle were unfit parents on the bases alleged by the State in its motion to terminate parental rights. The court also entered a permanency order stating that Kala's and Kyle's parental rights were terminated and that the minors were in adoptive placement. Also on

June 18, 2015, the trial court entered orders finding that the minors' best interests would be served by terminating the parental rights of Kala and Kyle.

¶ 48 On July 17, 2015, the maternal grandfather filed a motion to intervene in both cases, in which he claimed that DCFS, through its contracted agency, Lutheran Social Services, Inc., misled him by telling him that he was ineligible to be the boys' foster father because he did not live in Illinois. He asked the court to order DCFS to follow its own procedures to determine whether a "relative placement" would be suitable. The records do not contain a court ruling on this motion.

¶ 49 Kala appeals from the termination of her parental rights.

¶ 50 **LAW AND ANALYSIS**

¶ 51 On appeal, Kala raises several issues. She alleges that the trial court violated her due process rights; failed to explore the possibility of placement of her sons with her father; and also alleges various procedural errors in failing to follow statutory guidelines and times for various hearing. She also argues that her attorney was ineffective. She finally argues that the attorney representing her sons was ineffective.

¶ 52 Termination of a parent's rights is an extreme act. *In re Adoption of Syck*, 138 Ill. 2d 255, 274-75, 562 N.E.2d 174, 184 (1990). A parent maintains a superior right to raise his or her own children. *Id.* 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). Until the court determines that a parent is unfit, the interests of both the parent and the child are concurrent "to the extent that they both 'share a vital interest in

preventing erroneous termination of their natural relationship.' " *In re D.T.*, 212 Ill. 2d 347, 363, 818 N.E.2d 1214, 1226 (2004) (quoting *Santosky v. Kramer*, 455 U.S. 745, 760-61 (1982)). The State must first prove that a parent is unfit by clear and convincing evidence. *Id.* at 360-61, 818 N.E.2d at 1225. After finding that a parent is unfit, the State must establish proof that termination of a parent's rights is in the child's best interests by a preponderance of the evidence. 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). On appeal of a best-interests determination, we must decide whether the trial court's decision is contrary to the manifest weight of the evidence. *In re S.J.*, 368 Ill. App. 3d 749, 755, 859 N.E.2d 281, 286 (2006).

¶ 53 The factors a court must consider in deciding a minor's best interests are:

- (1) the child's physical safety and welfare;
- (2) the child's background and ties (including family, culture, and religion);
- (3) the need for permanence, including familiarity, stability, and continuity with parental figures and other relatives;
- (4) risks related to substitute care; and
- (5) 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 trial court may consider the likelihood of adoption. *In re Tashika F.*, 333 Ill. App. 3d at 170, 775 N.E.2d at 308. The court can also consider the length of the child's relationship with his foster parents and 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)). The court is not required to consider each factor individually in determining the best interests of the child. *In re Tiffany M.*, 353 Ill. App. 3d 883, 893, 819 N.E.2d 813, 822 (2004).

¶ 54 Due Process Concerns

¶ 55 1. Notice

¶ 56 The liberty interest of a natural parent in the care, custody, and management of their children is a fundamental right protected by the due process clause of the fourteenth amendment. *In re A.H.*, 359 Ill. App. 3d 173, 182, 833 N.E.2d 915, 922 (2005). However, a termination of parental rights proceeding is different from a criminal proceeding in many aspects. *Id.* A termination procedure is civil and nonadversarial in nature. *Id.* The due process requirements in a termination procedure are simply that the proceedings be "fundamentally fair." *Id.*

¶ 57 Kala argues that she was never served with notice of the April 19, 2013, shelter care hearing. The two court records support that contention. The records also verify that the court appointed a GAL to represent the minors at the shelter care hearing. At the hearing, the GAL and the DCFS representative informed the court that both parents were notified of the time and place of the hearing. The resulting temporary custody orders indicated that the parents were not served. The court entered the temporary custody orders on April 19, 2013, but did not file them until April 29, 2013. The court *sua sponte* appointed attorneys to represent Kala and Kyle. Kala's attorney did not enter his appearances on her behalf until May 9, 2013, the next scheduled court date.

¶ 58 A parent has a due process right to adequate notice in juvenile proceedings. *In re A.M.*, 402 Ill. App. 3d 720, 724, 932 N.E.2d 82, 85-86 (2010). However, the parent can waive that right if the parent appears in court and fails to object to the court's jurisdiction. *Id.*; 705 ILCS 405/2-15(7) (West 2010). By appearing in court, the party submits to the court's jurisdiction. *Id.* In this case, Kala made numerous court appearances in this case and never argued that the court lacked *in personam* jurisdiction.

¶ 59 We also note that Kala's own actions made it extremely difficult for the State to provide notice that fully complies with statutory requirements. DCFS set up a safety plan that included daily home visits. Kala and Kyle fled the home and took up residence in a motel. On July 11, 2013, Kala admitted in court to the State's allegation that she was evading DCFS when she moved to the motel. Later, she provided DCFS with a false address, and refused to provide DCFS with her sister's address.

¶ 60 Moreover, despite the lack of formal service, it is apparent that Kala had actual notice of all or most of the proceedings. An attorney was appointed to represent Kala, after her first court-appointed attorney discovered that he had a conflict and could not represent her. Kala's second attorney wrote to her, met with her, and spoke with her all before May 9, 2013, when he filed the motion to set aside the temporary custody order. He met with her again on May 10, 2013, and spoke with her before court on May 23, 2013. Although the State did not formally serve her with papers, she attended the hearing on the adjudication of wardship on July 11, 2013, thereby submitting to the court's jurisdiction. See *In re A.M.*, 402 Ill. App. 3d at 724, 932 N.E.2d at 85-86 (where the father was not served but appeared in court four times, the father waived the service and

be DCFS. Once the child is in the custody of DCFS, the court maintains jurisdiction. *Id.* (quoting *In re Shawn B.*, 218 Ill. App. 3d 374, 380, 578 N.E.2d 269, 273-74 (1991)). As failure to renew the order does not relate to the court's power to hear and adjudicate a child neglect case, the court retained subject matter jurisdiction and the order was not void. *Id.*

¶ 63

3. Other Procedural Issues

¶ 64 Kala argues that the court was required to hold the dispositional hearing within 30 days after the adjudication of wardship, which occurred on July 11, 2013. See 705 ILCS 405/2-21(2) (West 2010). We find that the records are quite difficult to navigate. Oftentimes the court entered orders weeks after the hearings were held, which adds to the overall confusion presented in these two records. However, in this situation, having thoroughly reviewed the record, we find that the dispositional hearing took place on two dates—August 8, 2013, and September 5, 2013. The first of these two hearing dates was within 30 days of the adjudication of wardship. We therefore conclude that the dispositional hearing was valid.

¶ 65 Kala argues that she was never admonished about the potential of losing her parental rights. We do not have transcripts of all of the court hearings, and so are not able to determine whether the court admonished Kala. As the appellant, Kala bore the responsibility to provide a full and complete appellate record. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). Additionally, we note that Kala was present at the July 11, 2013, adjudicatory hearing. Although we lack a transcript, the resulting adjudicatory order indicates that the court advised the parties of

the nature of the proceedings and their rights and the court's dispositional alternatives. Furthermore, DCFS provided Kala with copies of all of her service plans. Each service plan contained very clear indications of the risks of noncompliance.

¶ 66 Kala next claims that the permanency hearings were not timely held every six months. See 705 ILCS 405/2-28(2) (West 2010). The record refutes this claim. The court held its first permanency hearing on October 24, 2013, three permanency hearings in 2014, and two additional hearings in the first three months of 2015.

¶ 67 Kala also makes a claim that Kyle's adjudicatory hearing was outside of the relevant time frame. We find that Kala lacks standing to make this claim.

¶ 68 Relative Placement

¶ 69 Kala argues that DCFS violated its own statutory guidelines that require DCFS to "make reasonable efforts to identify and locate a relative who is ready, willing, and able to care for the child." 20 ILCS 505/7(b) (West 2010). Initially, DCFS placed both S.K.V. and B.J.V. with Kala's mother. However, within three days, she asked DCFS to place the children elsewhere. Kala claims that her father was ready, willing, and able to care for the boys, but that DCFS did not consider him, and in fact misinformed him that he was ineligible because he lived out of state. Kala's father made these claims in a petition filed after the court terminated Kala's parental rights. The allegations within that petition are not fact, and have not been proven. Kala's father claims in his petition that Kala filed a "specific consent" asking that DCFS place the children in his care. Kala cites no legal authority that Illinois allows a parent to consent to a specific foster home. Furthermore, there is nothing in the records supporting this claim. We agree that after

Kala's mother returned the children to DCFS care, DCFS would have been required to look for alternate family placement. The first service plan dated in June 2013 indicates that the children were in traditional foster care as "[n]o other relatives have shown interest at this time." DCFS repeated this statement in each service plan. We find no merit in Kala's argument that the State violated her due process rights by not placing her sons in her father's care.

¶ 70 Ineffective Assistance of Counsel

¶ 71 Kala claims that her attorney and the GAL were ineffective.

¶ 72 First we note that Kala has no standing to claim that the GAL was ineffective. A GAL is appointed in a termination case to represent the minors. 705 ILCS 405/2-17 (West 2010). The GAL does not represent the parents. *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 415-16, 639 N.E.2d 897, 903-04 (1994). Even if Kala had standing to raise this issue on behalf of her children, from a review of the record, the GAL was active in the cases. From the billing records, the common law record, and transcripts of hearings, we note that the GAL reviewed all records, kept in touch with DCFS, attended every hearing, and cross-examined witnesses. Accordingly, we reject this argument.

¶ 73 For Kala to prevail on a claim of ineffective assistance of her court-appointed counsel, she must establish that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficient performance so prejudiced her that but for counsel's errors the outcome of the hearing likely would have been different. *In re A.J.*, 323 Ill. App. 3d 607, 611, 753 N.E.2d 551, 554 (2001) (citing *Strickland v. Washington*,

466 U.S. 668, 694 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526-27, 473 N.E.2d 1246, 1255-56 (1984)).

¶ 74 Kala claims that attorney Booker, who represented her from May 2, 2013, until February 19, 2015, was ineffective on several bases. Her first claim centers on her contention that the court lost jurisdiction by not renewing the original shelter care order. She claims that Booker should have filed a special and limited appearance on her behalf. This argument is flawed because, as we explained earlier, the court maintained jurisdiction over the case. Because the court maintained jurisdiction, any attempt to contest jurisdiction would have failed.

¶ 75 Kala also argues that Booker should have raised the issue that DCFS did not place her children with her father. We dispensed with this matter earlier. Kala's father made allegations after Kala's parental rights were terminated. There is no proof of his allegations. Furthermore, DCFS indicated in its reports that there was no family member willing to take custody of the boys. We do not find that Booker was ineffective on this basis.

¶ 76 Finally, Kala argues that Booker was not proactive enough, and that his failings contributed to her downward spiral. This speculative argument is also not supported by the record. The record establishes that Booker was actively involved in all of the court hearings.

¶ 77 We find no evidence that Booker's performance fell below the objective standard of reasonableness required in his representation of Kala.

¶ 78 Furthermore, from our review of the record, we find that Kala is not able to establish that but for counsel's claimed errors, the outcome of the hearing would have been different. DCFS removed the children from Kala's care on or about April 19, 2013. The court terminated Kala's parental rights on April 30, 2015. Within those two years, DCFS guided Kala on steps she needed to take to regain custody. She did not make reasonable progress on any goal during those two years, primarily due to addiction issues. There was a short time period when Kala began making progress on her goals. However, that progress was short-lived, and Kala returned to her noncompliant and avoidant behaviors. The boys had been with the same foster family for two years, were bonded with that family, and were thriving. The facts of this case amply support that the court's order terminating Kala's rights was not contrary to the manifest weight of the evidence. We find nothing to support that the outcome would have been different but for the alleged errors.

¶ 79

CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgment of the circuit court of Union County.

¶ 81 Affirmed.