2016 IL App (1st) 152228-U

FOURTH DIVISION
January 13, 2016

No. 1-15-2228



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* MAISAHN G., DEANTE Y., and DEZRA K., minors, | ) | Appeal from the |
| | ) | Circuit Court of |
| Minors-Appellees, | ) | Cook County. |
| | ) | |
| (The People of the State of Illinois | ) | |
| | ) | |
| Petitioner-Appellee, | ) | Nos. 13 JA 121 |
| | ) | 13 JA 122 |
| v. | ) | 13 JA 123 |
| | ) | |
| Khalidah W., | ) | Honorable |
| | ) | Robert Balanoff, |
| Respondent-Appellant.) | ) | Judge Presiding. |

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PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held*: Because of the overwhelming evidence supporting the trial court's finding of respondent's unfitness, any error in declining to hear closing arguments at the unfitness portion of the termination of parental rights proceedings was harmless.

¶ 2 Following hearings on unfitness and the best interest of the children, the trial court terminated the parental rights of respondent Khalidah W. to minor children Maisahn G. (born January 27, 2013), Deante Y. (born December 8, 2008), and Dezra K. (born August 8, 2006).

Respondent appeals, arguing that (1) she was deprived of her constitutional and statutory rights to counsel when the trial court refused to allow her attorney to make a closing argument at the fitness portion of the termination of parental rights hearing; and (2) she was deprived of her right to due process and a fair hearing by the trial court's refusal to allow closing argument.

¶ 3 In February 2013, the State filed petitions for adjudication of wardship of the three minor children under the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2012)). The petitions alleged that all three children were neglected due to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2012)), and abused due to a substantial risk of physical injury (705 ILCS 405/2-3(2)(ii) (West 2012)). The petition regarding Maisahn also alleged that he was born substance exposed (705 ILCS 405/2-3(1)(c) (West 2012)). The supporting facts in the petitions stated:

> "Mother has three prior indicated reports for neglect. Mother has prior diagnoses of depression, bipolar disorder and anxiety. Mother tested positive for illegal substances three times during her pregnancy for [Maisahn]. Mother was non-compliant with drug treatment requested by DCFS. Mother says she does not use illegal substances but sells them."

¶ 4 On February 4, 2013, the trial court took temporary custody of the children. On August 19, 2013, the parties entered a written stipulation of facts. The stipulation stated that Jhomarie Ramos would testify that she was an intact worker from Catholic Charities and was assigned to the case following a Department of Children and Family Services (DCFS) indicated report. She first met with respondent on January 17, 2013. She informed respondent that respondent needed to be assessed and receive services, including substance abuse treatment. Respondent indicated

that she did not need services. Respondent was scheduled for a full assessment on January 22, 2013, but she was over two hours late and the assessment could not be completed. Ramos met with respondent on January 25 and again informed respondent that she needed to be assessed for services, respondent said she did not need services. Ramos had significant concerns for respondent's ability to care for the minors.

¶ 5 Further, Rosalynn Walker would testify that she was a DCP investigator assigned to the minors' cases. On January 29, 2013, Walker spoke with respondent. Respondent told her that she used PCP and the last time she used was the day she gave birth to Maisahn. Respondent stated she does not do drugs, but sells them. Respondent also said that she has been diagnosed as being anti-social and narcissistic. On January 31, 2013, Walker spoke to Dezra. Dezra said that "her mother tried to make her smoke crack by telling her to suck on a blunt." Respondent has "beaten her on the head with her hand and a belt." Walker also spoke with Deante on that date. He said that respondent used to hit him which would leave marks on his body. Deante "knows what drugs are and that his mother tried to make him smoke a blunt."

¶ 6 The stipulation also included medical records from Mt. Sinai Hospital which showed that Maisahn tested positive for PCP on January 28, 2013. Respondent tested positive for PCP on August 5, 2012, September 19, 2012, and January 27, 2013. Dr. Almeida would testify that she was a physician employed at University of Illinois Hospital and was the attending physician for respondent in November and December 2012. Respondent was diagnosed with mood disorder NOS, PCP abuse, and anti-social personality disorder with narcissistic and histrionic traits.

¶ 7 On September 24, 2013, the trial court adjudicated all three minors abused or neglected. Maisahn was adjudicated abused or neglected on the grounds of injurious environment, drug exposed infant, and substantial risk/physical injury. Deante and Dezra were adjudicated abused

or neglected on the grounds of injurious environment and substantial risk/physical injury. Also on that date, the court entered dispositional orders adjudging the minors wards of the court. Respondent was found unable to care for the minors. The putative fathers were also found unable to care for them. The court also conducted a permanency plan hearing after the adjudication and disposition hearings. It entered a permanency goal of return home within twelve months, finding that respondent had not made substantial progress toward return home.

¶ 8 At the permanency plan hearing on August 6, 2014, the trial court changed the permanency plan to substitute care pending court determination on termination of parental rights. The court ruled out return home and found that the children were in a preadoptive foster home that was meeting their needs.

¶ 9 On January 30, 2015, the State filed petitions to terminate respondent's parental rights for all minors and to appoint a guardian with the right to consent to adoption. The petitions alleged that respondent was unfit because she has failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare, and she has failed to make reasonable efforts to correct the conditions which were the basis for the removal of the children and/or has failed to make reasonable progress toward the return of the children within 9 months after the adjudication of neglect or abuse, or within any 9 month period after said finding. The petitions stated that it was the best interest of the minors to have a guardian appointed with the right to consent to adoption because the children have been with their foster parent since 2013, the foster parent desires to adopt the minors, and adoption by the foster parent is in the best interest of the minors.

¶ 10 The unfitness hearing for the termination proceedings was conducted on July 2 and 8, 2015. Prior to the proceedings on July 2, respondent's attorney objected to continuing because

the case file she had received was missing notes from February 11, 2013, to March 20, 2013; March 26, 2013, to April 19, 2013; and April 25, 2013, to May 31, 2013. The case was passed for the attorneys to discuss the matter. When the proceeding resumed, the assistant State's Attorney (ASA) stated that Khoulood Abad, the caseworker, and the agency were going through the physical file and computer system to see if the records could be located. The case was passed a second time. When the case was recalled, respondent's attorney stated that the caseworker had given her additional notes from May 28 and May 31, 2013. Respondent's attorney specified that the missing files were case notes from February 11, 2013, to March 20, 2013, and visitation notes for visits that occurred from March 26, 2013, to April 19, 2013, and April 25, 2013, to May 31, 2013. The ASA stated that the State's case would focus on the time period after the adjudication, September 24, 2013, other than what brought the case into the system. Respondent's counsel objected to starting the hearing. The trial court ruled that the hearing would commence, but since a second date was already scheduled for July 8, the caseworker could look for the notes and would reserve cross-examination until that date.

¶ 11 Prior to the start of the July 8 hearing, Abad stated that after she searched her agency files, she could not find the notes that respondent observed were missing. Respondent's attorney objected to proceeding without the notes. Alternatively, counsel requested that the judge infer that for the time periods with missing notes that the visits were appropriate and respondent was in services and making progress. The State objected to these inferences and the public guardian objected to the inference that respondent was in services and making progress. The trial court stated that based on notes from previous testimony, respondent was consistent in her visits and that was the inference the court was asked to make. The court also stated that at the time for closing arguments, respondent can argue and the court will see by that time what the facts show.

The court said that respondent's counsel could bring up the missing case files at closing argument if counsel felt that the time periods "in question here have relevance then include it in the final argument."

¶ 12 On July 2, 2015, Abad testified at the unfitness hearing that she was employed as a caseworker with Unity Parenting and Counseling (Unity). She was assigned the family's case in March 2013, one month after it came into the system. There were no records from the one month period that another caseworker had the case.

¶ 13 Abad identified three service plans that she created for the minors' cases; one dated January 7, 2014; the next was July 17, 2014; and the third was January 20, 2015. Abad testified that the case was opened for intact services after a hotline report on January 17, 2013, that respondent dragged Dezra down the street and knocked her into a wall as she cried and said she did not want to be with respondent. Then on January 28, 2013, a hotline call was made reporting that respondent had given birth to a PCP exposed baby. A third hotline call was made the next day because Dezra told the worker that respondent tried to make her smoke crack.

¶ 14 Abad met with respondent to discuss respondent's participation in services. After the adjudication in September 2013, Abad created a service plan for respondent which included inpatient drug treatment, intensive outpatient drug treatment, TASC, random urine drops twice per month, NA/AA meetings with logs to Abad, a psychiatric evaluation, and individual therapy.

¶ 15 Respondent needed drug treatment due to her long history of PCP use. Respondent was initially recommended for Haymarket MISA, and began inpatient treatment on February 12, 2013, but was discharged six days later for fighting. When Abad was assigned the case, respondent had been at Gateway's inpatient program since February 18, 2013. On April 11, 2013, respondent was successfully discharged from Gateway and moved to a recovery home.

Respondent returned to Gateway on April 18, 2013, and was successfully discharged on May 20, 2013. After the adjudication hearing, respondent was referred to inpatient treatment at Prosperity House, but she did not complete the program.

¶ 16 From September 2013 to January 2014, respondent was incarcerated at the Cook County Department of Corrections for robbery, and did not receive services during that time. Abad did not visit respondent in jail, but saw her in court and the lockup. Abad did not send respondent letters.

¶ 17 Abad testified that respondent was eager to see her children when she was released in January 2014. Abad created a service plan that included drug treatment for respondent. A Juvenile Court Assessment Program (JCAP) substance abuse assessment occurred in January 2014, and recommended inpatient treatment, but respondent wanted to participate in outpatient treatment. On February 8, 2014, respondent returned to Gateway for intensive outpatient treatment, but was unsuccessfully discharged on March 26, 2014, for continuing to test positive for PCP. Respondent went to the Women's Treatment Center for inpatient treatment on March 28, 2014, but left without completing the program. She was referred to Gateway again in April 2014, and she began intensive outpatient treatment in June 2014, but did not successfully complete the program.

¶ 18 Respondent was shot and admitted to the hospital for a month, and was discharged on July 21, 2014. In August 2014, respondent successfully completed the inpatient program at South Suburban and discharged to a transitional program at Pinnick Place. Respondent was discharged from Pinnick Place on August 27, 2014, because she tested positive for PCP. Respondent was allowed to return to Pinnick Place, but was discharged again on September 26, 2014, for a positive PCP test.

¶ 19 Abad testified that respondent was available for the TASC coach and submitted to urine drops twice a month beginning in January 2014. All of respondent's drops from January to August 2014 tested positive for PCP. The permanency goal changed in August 2014, and TASC discharged respondent. Abad did not ask respondent to drop again after the goal change.

¶ 20 Abad testified that respondent needed NA/AA services to maintain her sobriety. In June and July 2013, respondent provided Abad with proof of attendance at seven meetings, but respondent did not consistently provide logs. Since then respondent has not provided any logs of meeting attendance. Respondent attended meetings during inpatient treatment, but needed to go elsewhere when she was outpatient. Respondent told Abad that she had a sponsor, but Abad did not inquire further because it was confidential.

¶ 21 Abad also stated that respondent need a psychiatric evaluation. In July 2014, respondent was referred for an evaluation at Bobby Wright, but respondent did not comply. Abad did not receive any progress reports from respondent indicating that she was participating in individual therapy.

¶ 22 Abad further testified that respondent received twice-weekly supervised visitation with her children and she consistently attended the visits. Abad stated that some visits were fine, but at some visits, respondent appeared to be under the influence. Abad specifically noted a visit on June 9, 2014, in which respondent arrived late, was moving slowly and unable to maintain her balance while walking, and her eyes were "glossy." At that visit in a park, respondent carried Maisahn with her to talk to an unknown man. Respondent ignored Abad when asked what she was doing. Respondent later told Abad that she was trying to give the man her phone number. Abad never recommended unsupervised visits because respondent was noncompliant with services and continued to drop positive for PCP.

¶ 23 After the goal change in August 2014, the visitations changed to once a month. Respondent was not consistent with those visits. The November visit did not occur because Abad could not reach respondent. The December visit did not occur because respondent called to cancel while Abad was on her way to pick up the children. The January visit did not occur because respondent failed to confirm the visit ahead of time. There were no missed visits after January 2015. At the June 2015 visit, respondent appeared to be under the influence and was slow moving. Respondent did not realize when Abad ended the visit early due to Abad's concern that respondent was under the influence.

¶ 24 Abad testified that she rated respondent's progress toward the service plans from January 2014, July 2014, and January 2015, as unsatisfactory because respondent did not complete the recommended services.

¶ 25 On cross-examination by respondent's counsel, Abad testified that she did not have any records prior to her assignment to the case in March 2013. She said she spoke with the caseworker, but did not record the conversation in her case notes. Abad made case notes on visits in April 2013 based on what the visit supervisors told her, but she could not find the notes. She looked for hard copies as well as computer copies in the system, but could not locate them. Abad had independent recollection of visits from March and April 2013. She took the children to Gateway to visit respondent.

¶ 26 Following Abad's testimony, the parties rested. The court then stated, "All right. I don't need final arguments. All right. Thank you very much. The State has met their burden of proof. The mother will be found to be unfit under Grounds B and M for all periods alleged." The court went on to find the fathers for all three children unfit. The court further held,

> "The fact supporting the mother's findings are that the mother never successfully completed any drug services although she did attend treatments and sometimes was successfully discharged. All her drops during the pendency of the case were positive for PCP. She – the mother was not consistent in attending the NA-AA meetings. She was never – never successfully completed individual therapy, never did a psychiatric assessment.
>
> The mother was incarcerated from September 2013 till [*sic*] January of 2014 during which time no visits took place nor did the mother visit for at least two months in 2014.
>
> Although the mother was mostly consistent with her visits with minors at times she seemed under the influence of alcohol. The visits were sometimes [*sic*] ended early and never during the pendency of this case did the mother achieve unsupervised visits – unsupervised overnight visits for return home.
>
> The State has met their burden of proof that the mother and the fathers are unfit."

¶ 27 The trial court then asked if the parties were ready to proceed to the best interest portion of the termination proceedings. At that point, respondent's counsel stated, "Your Honor, I just wanted my objection noted that I intended to make an argument and you prevented argument on behalf of the mother." The trial court responded, "There's no right to final argument ***. I'll note your objection but the fact is *** there's no right in any law or statute, unless you can somehow point it out to me, for final argument but noted."

¶ 28 At the court's invitation to present any law or citation, respondent's counsel remained mute. When the court then asked the parties if they were ready to proceed to the best interest hearing, the ASA answered in the affirmative, but respondent's counsel did not comment. Thereafter, the parties proceeded to the best interest hearing.

¶ 29 Abad testified again at the best interest hearing. She stated that all three minors are placed together in the preadoptive home of a relative, Ms. V.-W. The home was safe and appropriate, with no signs of abuse, neglect, or corporal punishment. Initially, Maisahn was placed in traditional foster care placement, but the minors have been together since November 2013. All the minors' medical, vision, dental, and hearing care were up to date. In the past six months, Deante had to be hospitalized for two weeks for behavioral issues, and then returned to the home of Ms. V.-W. There have been no further incidents.

¶ 30 Dezra has successfully completed third grade and was going to start fourth grade in the fall. She had an individualized education program (IEP) for behavior issues, but there were no other educational concerns for her. Dezra is going on outings with Ms. V.-W. Dezra takes three medications for intermittent explosive disorder, tantrums, and ADHD. Dezra was participating in family therapy with Ms. V.-W. and her brothers, but the therapist left the agency and the family is on a waitlist to continue therapy. She is on a waitlist for trauma therapy at Children's Research Triangle.

¶ 31 Deante finished kindergarten and would enter first grade in the fall. He does not have an IEP. He needs trauma focused therapy, and was on a waitlist. Maisahn has an ISP for early intervention services. Abad stated that there was a concern his eye was wandering and Ms. V.-W. planned to have him evaluated by a doctor.

¶ 32 Abad testified that the children are very bonded to their foster mother and she was very loving to the children. Their interactions are loving and the children listen to Ms. V.-W. The children told Abad that they feel safe there. They call her, "granny." Ms. V.-W. is willing to adopt the minors. Ms. V.-W. has a backup plan for help from her daughter. Ms. V.-W. takes the children to family gatherings and on vacation with her family. Abad stated that Ms. V.-W. can meet the children's medical, educational, and emotional needs.

¶ 33 Abad spoke with Dezra and Deante the day before the hearing. Both stated that they wanted to stay with Ms. V.-W. Dezra said she was wanted to stay with someone who cared for her and had always stated that she wanted to remain with her foster mother. Abad testified that the agency concluded that it was in the best interest of the children that respondent's parental rights be terminated. She said adoption was in the best interest of the children.

¶ 34 On cross-examination by respondent, Abad stated that Ms. V.-W. was 55 years old. She said that family therapy was not offered to respondent because she did not make progress. The minors call respondent, "mom." She stated that the children and respondent love each other. Abad testified that Dezra told her that she loved her mother, but that her mother had a lot of work to do and could not take care of her and her brothers right now. The minors did not have phone contact with respondent because the relationship between respondent and Ms. V.-W. was not good. Ms. V.-W. would not take respondent's phone calls because respondent harassed her and said inappropriate things.

¶ 35 Ms. V.-W. testified that she was the minors' foster mother. Dezra and Deante had been with her for about two and a half years and Maisahn had lived with her for two years. She was the minors' maternal great aunt through marriage. She stated that she believed that she could continue to meet the children's emotional, health, and educational needs as they grew. Dezra and

Deante call her grandma or granny, and Maisahn calls her mom. She stated that she was bonded to the children and wished to adopt them if they became available for adoption. She loved the minors as if they were her own children.

¶ 36 On examination by the public guardian, Ms. V.-W. testified that respondent asked her to take them in when the children came into the system because respondent knew Ms. V.-W. would not mistreat them. The minors were included in her extended family activities. Ms. V.-W. loved respondent, but does not have a relationship with her. She does not have a problem with respondent having appropriate contact with the minors. Ms. V.-W. previously supervised visits with respondent and the children. She said respondent was sometimes appropriate with the children, but would have a negative attitude toward Ms. V.-W. when the visits ended.

¶ 37 Over her attorney's objection, respondent made a statement. She said she has made mistakes. She completed treatment multiple times. She stated that the visits went badly when the children did not want to leave. Respondent said that Abad wrongly assumed that every conversation respondent had with other individuals during her visits with her children concerned a drug transaction. She stated that she had a counselor at Bobby Wright. She asked the court not to terminate her parental rights.

¶ 38 Following respondent's statement, the trial court held that the State met their burden of proving that it was in the best interest of the minors that respondent's parental rights be terminated. The court appointed a guardian with the right to consent to adoption.

¶ 39 This appeal followed.

¶ 40 On appeal, respondent argues that the trial court deprived her of her right to counsel and due process by refusing to allow her attorney to make a closing argument at the end of the unfitness hearing. Respondent has not raised any challenge to the merits of the findings from the

termination proceedings. The State and the Public Guardian maintain that respondent's right to counsel and due process rights were preserved.

¶ 41 "Although there is no constitutional right to counsel in proceedings pursuant to the Act, a statutory right is granted under the Act." *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32; see also *People v. Lackey*, 79 Ill. 2d 466, 468 (1980). Section 1-5(1) of the Act provides that minors and their parents have the right to be represented by counsel in a juvenile proceeding. 705 ILCS 405/1-5(1) (West 2012). Section 1-5(1) provides, in relevant part:

> "the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel." 705 ILCS 405/1-5(1) (West 2012).

Nevertheless, Illinois courts have recognized that "inherent in [the Act's] right to counsel is the right that such counsel be effective." *In re D.M.*, 258 Ill. App. 3d 669, 673 (1994). Courts have utilized the guidelines from criminal cases under *Strickland v. Washington*, 466 U.S. 668 (2000), to evaluate effectiveness in juvenile court proceedings. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32.

¶ 42 Respondent appears to conflate the use of *Strickland* guidelines to create a sixth amendment right to counsel. That is not the case. Respondent possessed a statutory right to counsel and said counsel should be effective. Nothing in those rights created a constitutional

right to counsel. Further, respondent does not advance an argument that her attorney was ineffective requiring a review using the *Strickland* framework.

¶ 43 Rather, respondent's argument is that the trial court's decision that it did not need closing arguments before ruling at the unfitness hearing violated her right to counsel. Respondent bases her argument on the Supreme Court decision in *Herring v. New York*, 422 U.S. 853 (1975). In *Herring*, the Supreme Court considered the constitutionality of a New York statute that allowed the trial court in nonjury criminal trials the right to deny counsel the right to make a closing argument before issuing a judgment. *Id.* at 853-54. The *Herring* Court observed,

> "It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt." *Id.* at 862.

¶ 44 The Court held that

> "there can be no justification for a statute that empowers a trial judge to deny absolutely the opportunity for any closing summation at all. The only conceivable interest served by such a statute is expediency. Yet the difference in any case between total denial of final argument and a concise but persuasive summation

> could spell the difference, for the defendant, between liberty and unjust imprisonment." *Id.* at 863.

¶ 45 However, at issue in *Herring* was the denial of a right to make closing arguments in a criminal bench trial. Nothing in *Herring* extended the holding to civil or juvenile court proceedings. Nor has respondent cited any authority holding that the denial of closing arguments outside of criminal trials implicates a deprivation of a right to counsel. We decline to extend the holding of *Herring* to apply in juvenile court proceedings. Here, respondent did not have a constitutional right to counsel, but a statutory one, and she has failed to show how the denial of closing arguments violated her statutory right to counsel.

¶ 46 Respondent also argues that the trial court deprived her of due process rights and a fair hearing when it refused to let her attorney make closing arguments. Respondent asserts that Illinois courts have "long recognized that refusal to allow counsel to make a closing argument also constitutes a violation of due process sufficiently egregious for reversible error."

¶ 47 In support of finding a due process violation, respondent cites two criminal cases, *People v. Millsap*, 189 Ill. 2d 155 (2000), and *People v. Diaz*, 1 Ill. App. 3d 988 (1971), which as previously noted fall under a different, that is, constitutional standard. Respondent also cites *In re D.R.*, 307 Ill. App. 3d 478 (1999), for the proposition that it was a "due process violation where mother's counsel was prepared to argue in her absence at termination hearing but was precluded."

¶ 48 In that case, the mother failed to appear at the scheduled hearing and the State filed a "motion to bar any defense, to strike witnesses and exhibits, to bar testimony and for judgment by default pursuant to Supreme Court Rule 219(c)." *Id.* at 481. The court granted the State's motion and entered a default judgment. The court then heard the State's evidence, took judicial

notice of previous findings and records, and then found by clear and convincing evidence that the mother was unfit and it was in the best interest of the children to have her parental rights terminated. *Id.* On appeal, the mother argued that "her due process rights were violated where her counsel was barred from cross-examining witnesses, presenting a defense or making argument on the respondent's behalf." *Id*. at 482. The reviewing court agreed, finding the sanctions to be an abuse of discretion. *Id.*

¶ 49 The court noted the drastic nature of termination proceedings. "A parent's interest in maintaining a parental relationship with her child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment." *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). "Because of this interest, certain due process safeguards have been granted to parents in actions to terminate their parental rights. Those rights include the right to be heard, to present evidence material to the proceedings, and to cross-examine witnesses." *Id.* (citing 705 ILCS 405/1-5 (West Supp. 1997)). Noticeably absent from the due process rights granted under section 1-5(1) of the Act is the right to make a closing argument. Another case cited by respondent, *In re Vanessa C.*, 316 Ill. App. 3d 475 (2000), is distinguishable from the circumstances of this case. There, the trial court entered an order as a sanction that barred the respondent from presenting a defense at termination proceedings, which the reviewing court found violated her due process rights. *Id.* at 480-81. Respondent has failed to cite any authority holding that the denial of closing arguments violated her due process rights. Respondent has not asserted that she was deprived of any of the statutorily provided rights at the unfitness hearing.

¶ 50 Respondent contends that a trial court who states it has no need for closing arguments is one that has prejudged the case. Respondent bases this statement on the holding in *People v. Diaz*, 1 Ill. App. 3d 988 (1971). In *Diaz*, the defendants argued on appeal that they were denied

a fair trial and their due process rights were violated when the trial court made a finding of guilty three times before all the evidence had been presented. *Id.* at 992. The reviewing court concluded that "when defendants were found guilty by the trial judge three times before he had heard the evidence and given them the opportunity to argue their cause by counsel, they were denied a fair and impartial trial." *Id.* at 993.

¶ 51 Respondent attempts to liken the instant case with the errors in *Diaz* by stating that the trial court's comments that it was unaware of any law or statute requiring closing argument "exhibited impatience as well as a deplorable lack of awareness of the Juvenile Court Act's provision regarding the rights of the parties and the well-settled law cited herein." Contrary to respondent's assertion, neither the Act nor any cases require closing arguments, as the trial court correctly stated. Unlike *Diaz*, the trial court patiently and fairly heard the case and other than respondent's bare assertion, at no time did the court indicate that it had prejudged the case. The court entered a ruling at the close of the evidence.

¶ 52 Respondent also cites the Supreme Court decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), arguing her due process rights were violated when the trial court chose to rule without closing arguments. There, the Supreme Court considered whether it was a due process violation to terminate an individual's social security disability benefit payments without a hearing. *Id.* at 323. The Court set forth three factors to be considered when evaluating due process rights: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. After reviewing these factors, the

Court in *Mathews* held that an evidentiary hearing was not required to terminate the disability benefits and the present administrative procedure comported with due process. *Id.* at 349.

¶ 53 Even if the denial of closing arguments in this case was a denial of due process, "our supreme court has instructed that 'cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.' " *In re Deshawn G.*, 2015 IL App (1st) 143316, ¶ 64 (quoting *In re E.H.*, 224 Ill. 2d 172, 178 (2006)). Moreover, respondent has not offered any argument as to how this error prejudiced her. Instead, she contends that the error is so severe that it cannot be harmless and we should reverse and remand without a consideration of the weight of the evidence. However, Illinois courts have held that "even an error of constitutional dimension may be deemed harmless." *In re Kenneth F.*, 332 Ill. App. 3d 674, 680 (2002).

¶ 54 As discussed above, respondent was not deprived of any rights provided under section 1-5(1). She was afforded counsel, was present, was heard, had the opportunity to extensively cross-examine witnesses, and had the opportunity to present evidence on her behalf. To the extent that any error may have occurred, we consider it harmless because of the overwhelming and uncontested evidence presented at the unfitness hearing that respondent failed to make progress in required services, such as, consistently tested positive for PCP without a single negative result, failed to regularly attend NA/AA meetings, failed to participate in therapy, and never achieved unsupervised visitation.

¶ 55 Despite our conclusion above, we admonish trial judges that the preferable method in such a proceeding is to afford closing arguments. We have found no case that would condone or approve of the complete denial of counsel making a closing argument in termination proceedings. Had the trial court permitted arguments in these proceedings, even after the belated

objection and with no formal request at that time to argue, we would not be addressing this singular issue on appeal.

¶ 56 Finally, we find no error regarding respondent's suggestion that the trial court denied her the opportunity to argue about the missing case notes and failed to rule on her objection. First, we point out that the trial court did not reserve ruling on respondent's objection. The trial court implicitly overruled the objection, proceeded with the hearing, and resolved what inferences it would make regarding the missing notes, which was that the visits during that time period were consistent and appropriate. The court then stated that respondent's counsel could raise the missing case notes during closing argument, if she felt it was relevant. The trial court heard respondent's cross-examination of Abad, which included questioning about the missing records. The court was able to determine what weight it would give to that time period, in light of the significant evidence presented by the State regarding the more than two years following that time period in which respondent consistently dropped positive for PCP and failed to make progress in her required service plans. After hearing this evidence, the trial court found that it did not need closing arguments to make a finding of unfitness. Absent a violation of section 1-5(1), respondent has not shown that she suffered any prejudice in the trial court's decision to rule on the unfitness portion without closing argument.

¶ 57 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 58 Affirmed.