

NOTICE
Decision filed 08/29/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 180165-U

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).

NO. 5-18-0165

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> A.J., C.J., and J.J., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Jackson County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 16-JA-22
)	
N.R.,)	Honorable
)	William G. Schwartz,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in failing to make written findings before ordering custody and guardianship be transferred to minors’ father.

¶ 2 N.R., mother, appeals the decision of the circuit court of Jackson County entered on February 16, 2018, terminating the wardship of her children, A.J., C.J., and J.J., minors, and ordering custody and guardianship be transferred to Jamal J., father. Mother’s parental rights have not been terminated, and father is not a party to this appeal. We reverse and remand for further proceedings.

¶ 3 On September 19, 2016, all three minors, ages two, four, and five, were taken into protective custody. Mother had been arrested earlier that day for an incident not involving the children, rendering her unable to provide for her children's needs. C.J. and J.J. were not home at the time of their mother's arrest, but two-year-old A.J. had been left home alone unsupervised by any adult. Mother testified that as she was being taken into custody, she contacted a neighbor to watch the two-year-old. The neighbor testified that she had to crawl through a window to get to the child, even though mother claimed she had left the door unlocked. A.J. was taken into protective custody. The two older children were taken into protective custody later that day. A juvenile petition was filed the next day on September 20, 2016, alleging that A.J. was neglected having been left unsupervised the previous day, and that all three were dependent minors given that mother was incarcerated and father, who resided in Missouri, had no custodial rights and had little to no contact with the children. A shelter hearing was held on September 21, 2016, and all three children were placed in temporary custody of the Illinois Department of Children and Family Services (DCFS). The minors were later found to be neglected and dependent and the court ordered that custody and guardianship of all three children be placed with DCFS and that they be made wards of the court. The goal was for the children to return home within 12 months. At the February 2018 permanency hearing, the trial court found that the goal had been met and ordered that guardianship and custody be placed with father. According to the evidence presented on the record, father had established a four-bedroom home with his girlfriend and their five-month-old daughter, and had financial stability and the resources to provide for the needs of the three minor

children. DCFS had no other services to offer him that could assist him in parenting and no other services that would support the best interests of the children. Mother, on the other hand, had an extensive history with DCFS for leaving the children alone or inadequately supervised, necessitating court intervention. She failed to complete domestic violence or substance abuse assessments, had been evicted from her home, and had missed several visits with the children.

¶ 4 Prior to ordering the children returned to father, the court did not make any written factual findings that the health, safety, and best interests of the minors and the public no longer required DCFS wardship prior to terminating that wardship. The court also failed to hold a hearing or make any findings as to the fitness of father before giving him custody and guardianship of the minor children. Mother argues on appeal that in not making such written findings, the trial court failed to comply with the provisions of sections 2-31 and 2-28 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-31, 2-28 (West 2016)). She contends the court may only terminate proceedings involving the wardship of a minor when the court determines, and makes written factual findings, that the health, safety, and best interests of that minor and the public no longer require wardship. According to mother, the court's failure to comply with the statutory requirements is grounds for reversal. See *In re Aaron R.*, 387 Ill. App. 3d 1130, 1138-39 (2009). Mother points out that the only finding the court made concerning the minors in this instance was that the permanency goal to return the children home in 12 months had been achieved. Such a finding is insufficient to comply with the requirements of the Act.

She further asserts that a finding of father's fitness was also a statutory requirement that was not met. See *In re Vicente G.*, 408 Ill. App. 3d 678 (2011).

¶ 5 The State acknowledges that the court's actual written order awarding guardianship and custody to father, thereby closing the case, did not mention the best interests of the minors or the public. But, according to the State, the entire record, including the transcripts, the common law record, the service plans, and DCFS permanency reports, all support the court's decision to close the case, as that was consistent with the best interests of the children. The State continues that a full and fair review of the trial court's ruling is not precluded by the court's lack of written factual findings and that we may affirm the court's decision based upon the record alone. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004) (trial court need not articulate any specific rationale for its decision and reviewing court may affirm the trial court's decision without relying on any basis used by the trial court). Although factual findings may provide an explanation or reason for the decision, the State asserts it is the correctness of the court's ruling, and not the correctness of its reasoning, that is under review. *In re Rita P.*, 2014 IL 115798, ¶ 51.

¶ 6 We initially note that whether the trial court failed to follow statutory requirements is a question of law reviewed *de novo*. *In re Aaron R.*, 387 Ill. App. 3d at 1138. More importantly, while we do not disagree with the State's reasoning, under our reading of the Act, the court's written order must include a factual basis for its findings. In this instance, not only were there no written findings, there were not even any oral findings made by the court pertaining to any of the statutory requirements. We agree with mother

that, under the circumstances presented here, written findings were statutorily required and therefore mandatory. Under section 2-31(2), a trial court may only terminate proceedings “[w]henver the court determines, and makes written factual findings, that the health, safety, and the best interests of the minor and the public no longer require the wardship of the court.” 705 ILCS 405/2-31(2) (West 2016). If the court so determines, the court shall order the wardship terminated and all proceedings under the Act with respect to the minor in question are closed and discharged. 705 ILCS 405/2-31(2) (West 2016). In addition, before a guardianship is discharged as part of terminating wardship, section 2-31(2) requires the trial court to ensure compliance with section 2-28. 705 ILCS 405/2-31(2) (West 2016). Specifically, the court is precluded from returning a minor to the custody of a parent whose actions caused the minor to be adjudicated neglected until “a hearing is held on the issue of the health, safety[,] and best interest of the minor and the fitness of such parent *** to care for the minor and the court enters an order that such parent *** is fit to care for the minor.” 705 ILCS 405/2-28(4) (West 2016). See *In re Aaron R.*, 387 Ill. App. 3d at 1138-39. We therefore hold that in terminating the guardianship and wardship and closing the minors’ cases, the court failed to comply with the requirements of sections 2-31 and 2-28 of the Act. *In re Vicente G.*, 408 Ill. App. 3d at 683-84. The remedy, however, is a limited remand for the purpose of entering explicit, specific findings consistent with the requirements of sections 2-31(2) and 2-28 of the Act. See *In re M.M.*, 2016 IL 119932, ¶ 11. We therefore remand this cause for the entry of such written findings.

¶ 7 We further note that initially there was a motion taken with the case to cite additional authority. This motion was withdrawn at oral argument. Additionally, we note that pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) our decision in this case was to be filed on or before August 13, 2018, absent good cause shown. Oral argument could not be scheduled until August 22, 2018. Consequently, we find that good cause exists for issuing our decision after August 13, 2018.

¶ 8 For the foregoing reasons, we reverse and remand this cause for the entry of written findings made in accordance with the statutory requirements of the Act.

¶ 9 Reversed and remanded with directions.