

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).

2020 IL App (4th) 190700-U

NO. 4-19-0700

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 18, 2020

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> B.M., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Schuyler County
Petitioner-Appellee,)	No. 18JA1
v.)	
Lisa M.,)	Honorable
Respondent-Appellant).)	Scott J. Butler,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices DeArmond and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2018)), respondent waived appellate review of the trial court’s denial of her motion for a directed verdict because, following the denial, she presented evidence.

¶ 2 Respondent mother, Lisa M., appeals from the trial court’s order terminating her parental rights to her son, B.M. (born July 10, 2009). On appeal, respondent argues the court erred in denying her motion for a directed verdict. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 12, 2018, the State filed a petition for adjudication of wardship, alleging B.M. was neglected under section 2-3(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a) (West 2016)). On May 23, 2018, the trial court entered an adjudicatory order finding B.M.

to be neglected. Subsequently, the trial court entered a dispositional order finding respondent unfit and unable to care for B.M., making B.M. a ward of the court, and placing B.M. in the custody and guardianship of the Illinois Department of Children and Family Services (DCFS).

¶ 5 On June 24, 2019, the State filed a petition to terminate parental rights, alleging that respondent was an unfit parent, as described in sections 50/1(D)(m)(i) and 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i)-(ii) (West 2018)), and that it was in the best interest of B.M. that respondent's parental rights be terminated. (We note the State also sought to terminate the parental rights of B.M.'s father and that, ultimately, his parental rights were terminated; however, he is not a party to this appeal and we discuss the facts only as they relate to respondent and B.M.)

¶ 6 On August 14, 2019, a hearing was held on the State's petition to terminate parental rights. The only witness presented by the State was the DCFS caseworker who had been assigned to respondent's case. The caseworker testified regarding the progress and effort made by respondent toward reunification with B.M. Once the State rested, respondent's counsel moved for a directed verdict, asserting "[A]t this time, I don't believe the State has met their burden of clear and convincing evidence that my client is unfit." The court found the State had "put on a *prima facie* case of clear and convincing evidence regarding mom's efforts and progress towards *** reunification" and denied respondent's motion.

¶ 7 Respondent then testified on her own behalf. After respondent testified, she rested her case. Following the hearing, the trial court entered an order finding respondent unfit on both grounds alleged by the State, finding it was in the best interest of B.M. that respondent's parental rights be terminated and appointing DCFS as guardian of B.M. with the right to consent to his

adoption.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Respondent's sole contention on appeal is that the trial court erred in denying her motion for a directed verdict.

¶ 11 Section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2018)) provides a mechanism whereby a defendant in a non-jury case can move for a finding in her favor at the close of a plaintiff's case. Relevant here, the statute also provides, "If the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, *in which event the motion is waived.*" (Emphasis added.) *Id.* Applying this statute, this court has previously found, where a respondent parent in a termination proceeding presents evidence following denial of her motion for a directed verdict, she "waive[s] the issue for purposes of appeal." *In re L.M.*, 205 Ill. App. 3d 497, 513, 563 N.E.2d 999, 1009 (1990). Waiver is justified because "the trial court's ruling on the motion becomes merged into the judgment." *Id.*

¶ 12 Here, after respondent's motion for a directed verdict was denied, she testified on her own behalf. Because respondent presented evidence following the court's denial of her motion, she waived appellate review of the matter. See 735 ILCS 5/2-1110 (West 2018); *L.M.*, 205 Ill. App. 3d, at 513.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we affirm the trial court's judgment.

¶ 15 Affirmed.