

No. 1-10-3251

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE INTEREST OF:	)	Appeal from the
	)	Circuit Court of
Shanika M.,	)	Cook County
Minor-Respondent-Appellee,	)	
	)	No. 03 JA 1240
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	Honorable
	)	Maureen F. Delehanty,
v.	)	Judge Presiding.
	)	
DONNA M.,	)	
	)	
Mother-Respondent-Appellant).	)	

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JUSTICE KARNEZIS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

ORDER

*HELD:* The circuit court did not abuse its discretion by denying respondent's motion to compel the then 11-year old minor to testify at respondent's termination of parental rights trial and the guardian *ad litem* did not exceed his statutory authority at the trial by presenting evidence, cross-examining witnesses, making legal objections and arguing that respondent was not a fit parent.

The respondent, Donna M., appeals from an order of the circuit court denying

her motion to compel Shanika M. to testify and from an order terminating her parental rights. On appeal, respondent contends: (1) the trial court abused its discretion when it barred Shanika from testifying at the termination trial; and (2) respondent was prejudiced at the trial when the guardian *ad litem* (GAL) overstepped his statutory authority and acted as a prosecutor. For the following reasons, we affirm the judgment of the circuit court.

### BACKGROUND

Respondent is the natural mother of Shanika, born on May 15, 1998. On September 10, 2003, the State filed a petition for adjudication of wardship and a motion for temporary custody, alleging that Shanika was dependent because respondent was incarcerated and her father was unknown. A hotline call to the Illinois Department of Children and Family Services (DCFS) also alleged that Shanika had been going to neighbors' homes asking for food, her brother was forced to beg for money on the street, and Shanika was frequently left home alone.

On November 3, 2003, DCFS was granted temporary custody of Shanika. On January 5, 2004, the State amended its adjudication petition to include an allegation of neglect due to lack of care for Shanika, pursuant to section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2004)) (Act). On April 13, 2004, the circuit court adjudicated Shanika neglected due to lack of care, finding that respondent had left Shanika without a care plan and adequate food and clothing.

On May 27, 2004, the circuit court entered a dispositional order adjudging

Shanika a ward of the court and finding respondent unable to care for her. On that date, the circuit court entered a permanency order for Shanika, and set a permanency goal of return home within 12 months. Over the next several years, due to respondent's failure to make substantial progress, the circuit court changed the permanency goal to termination of parental rights on January 11, 2007.

On August 12, 2008, the State filed a supplemental petition for appointment of a guardian with the right to consent to adoption, requesting termination of respondent's parental rights. The petition alleged that respondent was unfit pursuant to subsections (b) and (m) of the Adoption Act (750 ILCS 50/1D(b), (m) (West 2008)), for failure to maintain a reasonable degree of interest, concern or responsibility as to Shanika's welfare, and, for failure to make reasonable efforts to correct the conditions that were the basis for removal and make progress or efforts within 9 months after adjudication of neglect.

On March 10, 2010, respondent's attorney filed a Rule 237(b) (166 Ill. 2d R. 237(b)) notice to compel then 11-year old Shanika's appearance at respondent's termination trial. The public guardian objected to the notice, alleging that compelling Shanika to testify would be emotionally harmful to her. On March 17, 2010, the circuit court held a hearing on respondent's Rule 237(b) motion.

At the hearing on the motion, Heather Jandura testified she has been Shanika's case worker for about a year. Shanika has been diagnosed with attention deficit hyperactivity disorder (ADHD), adjustment disorder, mood conduct disorder and

reactive attachment disorder. Shanika was hospitalized for several weeks in 2009, after a visit with respondent in which she became very upset and threatened to harm herself. Jandura stated she did not believe it was in Shanika's best interests to testify at respondent's termination trial because Shanika is "very torn between [respondent] and her foster family." She stated that it is difficult for Shanika to stay focused on one topic because of her ADHD, and her answers "are designed to please whoever she's talking to at the moment for the most part." Jandura believed that if Shanika were to testify, it could lead to another hospitalization because Shanika "has a very hard time handling the emotions regarding [respondent] and her foster family at the same time, and tends to deteriorate when asked to do so." Jandura also stated that even if Shanika's testimony occurred in an *in camera* proceeding in the judge's chambers, Shanika would still have great emotional difficulty testifying and her behavior would deteriorate. Jandura spoke with Shanika's therapist, Dr. Vicky Oliver, who recommended that it would not be in Shanika's best interest to testify. On cross-examination, Jandura testified that Shanika has told her at various times that she wants to be reunited with respondent as well as be adopted by her foster family.

Inga Kriltchev testified she has been the caseworker supervisor for Shanika since August 2006. Kriltchev stated she did not believe it was in Shanika's best interest to testify because Shanika struggles with trying to balance respondent and her foster family. Shanika has great difficulty dealing with having two caretakers, and will try to make one good and one bad, depending upon the circumstances. On cross-

examination, Kriltchev testified that Shanika has told her at times that she wants to return to respondent.

After the hearing, the circuit court denied the motion. The court stated, "I think having [Shanika] come in here today would only set her back. It seems to me she's got the caseworkers and the foster family invested in her emotional stability and she's making forward strides." The court also found that Shanika would not testify to any additional facts that could not be testified to by Shanika's therapist and caseworkers. The court further stated, "I think it would only be disruptive and cruel to this child to ask her to come in and testify, especially since a major emotional factor in this child's life is her torn loyalties between the foster family and mom."

#### ANALYSIS

On appeal, respondent neither challenges the circuit court's termination of parental rights findings, nor argues the circuit court's order terminating her parental rights was contrary to the manifest weight of the evidence. Rather, respondent first contends the circuit court abused its discretion when it denied respondent's motion to compel Shanika to testify at the termination trial. Respondent maintains that Shanika was competent to testify, so the court erred in precluding her from testifying. Respondent further argues the court could have questioned Shanika in an *in-camera* proceeding to insulate her from the presence of respondent and her foster parents.

Generally, it is within the circuit court's discretion to compel the appearance of a party at trial. *In re Mark W.*, 383 Ill. App. 3d 572, 589-90 (2008). The court's power to

compel a party to appear should only be exercised for good cause and in such a manner that a party may not be subject to harassment, oppression, or hardship. *In re Mark W.*, 383 Ill. App. 3d at 590, citing *Pickering v. Owens-Corning Fiberglas Corp.*, 265 Ill. App. 3d 806, 816 (1994). A circuit court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *In re A.W., Jr.*, 397 Ill. App. 3d 868, 873 (2010).

Under these circumstances, we find no abuse of discretion. The testimony at the hearing established that Shanika's mental health was very precarious and a traumatic event could have a negative effect on her well being. Both caseworkers stated they believed it was not in Shanika's best interest to testify and Jandura further stated that Shanika's therapist also believed it was not in Shanika's best interest to testify. Additionally, there was testimony at the hearing that Shanika has great difficulty balancing her emotions concerning respondent and her foster parents and Shanika's answers are designed to please whomever she is talking to at a given time. Moreover, as the circuit court found, Shanika would not testify to anything that could not be testified to by her caseworkers and therapist.

Further, respondent's contention that the circuit court abused its discretion because Shanika was competent to testify, is misplaced. The court did not base its decision on Shanika's competency, rather, it based its decision on Shanika's best interests, specifically finding that it would be "disruptive and cruel" to compel Shanika to testify. Therefore, the circuit court did not abuse its discretion in denying respondent's

motion to compel Shanika to testify.

Next, respondent contends she was prejudiced when the GAL overstepped his statutory authority and acted as a prosecutor at the termination hearing. Specifically, respondent argues the GAL acted as a "second prosecutor" at the fitness hearing when he presented evidence, cross-examined witnesses, made legal objections to the admissibility of evidence and argued that respondent was not a fit parent.

Initially, we note that respondent failed to object to any of the GAL's actions at trial. Where a party fails to make an objection in the circuit court, they have failed to preserve the question for review. *In re April C.*, 326 Ill. App. 3d 225, 242 (2001). Therefore, respondent has forfeited the issue. Nevertheless, even if the issue was not forfeited, we find it has no merit.

Pursuant to the Act, immediately upon the filing of a petition alleging that a minor is abused or neglected, the court must appoint a GAL. 705 ILCS 405/2-17(1) (West 2010). The GAL is charged with representing the best interests of the minor and with presenting recommendations to the court consistent with that duty. 705 ILCS 405/2-17(1) (West 2010). Section 1-5(1) of the Act provides that a minor who is the subject of proceedings under the Act has a 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 \* \* \* to be represented by counsel." 705 ILCS 405/1-5(1) (West 2010), see also *In re A.H.*, 359 Ill. App. 3d 173, 185 (2005).

Here, respondent complains of the very behavior that section 1-5(1) of the Act allows. As counsel for Shanika, the GAL was permitted to present evidence, cross-examine witnesses and argue for Shanika's best interests. By doing so at the termination trial, the GAL acted within his statutory authority. His actions were not, as respondent argues, that of a "second prosecutor." The State's Attorney was present at the proceeding and prosecuted the termination petition, not the GAL. We find the GAL's actions proper pursuant to the Act.

Accordingly, we affirm the judgment of the circuit court.

Affirmed.