

No. 1-14-1598

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In re VICTORIA T., SHAYNA K., and LEYLA K.	)	Appeal from the
	)	Circuit Court of
Minors-Respondents-Appellees,	)	Cook County.
	)	
	)	No. 09 JA 861
	)	09 JA 862
	)	10 JA 522
(People of the State of Illinois, Petitioner-Appellee v.	)	
David K. and Jennifer C., Respondents-Appellants).	)	Honorable
	)	Erica L. Reddick,
	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Justices Howse and Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's decision terminating respondents' parental rights was not against the manifest weight of the evidence. The minors' attorney did not suffer from a conflict of interest requiring reversal.

¶ 2 Respondents David K. (David) and Jennifer C. (Jennifer) appeal from the circuit court's order terminating David's parental rights with respect to minor-respondents Shayna K. (Shayna) and Leyla K. (Leyla) and Jennifer's parental rights with respect to Shayna, Leyla, and minor-respondent Victoria T. (Victoria). Respondents contend: (1) that the trial court's best-interest ruling was against the manifest weight of the evidence, and (2) that the minors' attorney suffered



from a conflict of interest because her conduct demonstrated that she placed the interests of Diane F. (Diane), the minors' paternal grandmother and foster parent, above the minors' best interests. We conclude that the trial court's decision to terminate respondents' parental rights was not against the manifest weight of the evidence and that the minors' attorney did not suffer from a conflict of interest necessitating reversal. We affirm the judgment of the trial court.

¶ 3 We initially note that this case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) because it involves a matter affecting the best interests of a child. Rule 311 states in relevant part that, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). In this case, respondents filed their notice of appeal on May 16, 2014. The 150-day period to issue our decision thus ended October 13, 2014. We have good cause for issuing our decision after the 150-day deadline. Respondents requested a motion for an extension of time to file their brief until August 28, 2014, which we granted. Respondents filed their brief *instanter* on September 25, 2014. On October 15, 2014, the public guardian requested an extension of time to file its brief until November 5, 2014. We granted the public guardian's motion but set a final due date of October 26, 2014. The public guardian and the State filed their briefs *instanter* on November 6, 2014. Respondents' reply brief was due November 20, 2014, which they filed *instanter* on December 3, 2014. In light of these circumstances, there is good cause to issue this decision after the 150-day deadline. We now turn to the merits of this appeal.

¶ 4 I. BACKGROUND

¶ 5 Jennifer is the biological mother of all three minors. David is the biological father of Shayna and Leyla. Victoria's biological father, Vincente, is not a party to this appeal, but he participated in the proceedings below.



¶ 6 Victoria was born November 2, 2003. Shayna was born November 24, 2008. At the time of Shayna's birth, she tested positive for cocaine, marijuana, and alcohol. From December 2008 to September 2009, the Department of Children and Family Services (DCFS) provided family intact services to Jennifer, David, and the children.

¶ 7 On October 7, 2009, the State filed separate petitions for adjudication of wardship for both Shayna and Victoria. On June 25, 2010, the juvenile court found that Shayna and Victoria were abused and neglected and adjudicated them wards of the court. DCFS placed Victoria and Shayna into foster care with Shayna's paternal grandmother, Diane.

¶ 8 Leyla was born April 16, 2010. At the time of her birth, Jennifer tested positive for cocaine and David provided a diluted urine sample for a drug test. On June 18, 2010, the State filed a petition for adjudication of wardship with respect to Leyla. On January 11, 2011, the juvenile court found her to be abused and neglected, adjudicated her a ward of the court, and placed her in DCFS custody. Diane served as Leyla's foster parent. The juvenile court initially set permanency goals for all three minors to return home within one year.

¶ 9 On July 20, 2012, the State filed motions to permanently terminate David and Jennifer's parental rights with respect to Victoria, Shayna, and Leyla, and to appoint a guardian with the right to consent to adoption. The motions alleged that Jennifer and David were unfit to parent Shayna and Leyla because they: (1) "failed to maintain a reasonable degree of interest, concern or responsibility as to the child[ren's] welfare" (750 ILCS 50/1D(b) (West 2012)); (2) were "habitual drunkards and/or addicted to drugs other than those prescribed by a physician, for at least one year prior to the commencement of the unfitness proceeding[s]" (750 ILCS 50/1D(k) (West 2012)); and (3) "failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child[ren] from them and/or have failed to make reasonable



progress toward the return of the child[ren] to them within [nine] months after the adjudication of neglect or abuse under the Juvenile Court Act, and/or within any [nine] month period after said finding." 750 ILCS 50/1D(m) (West 2012). The State made the same allegations with respect to Jennifer and Victoria.

¶ 10 On May 3, 2013, the juvenile court began the unfitness portion of the termination hearing. Emily Paine-Gibbons, a family intact services worker for DCFS, testified that she worked on the case from December 2008 to October 2009. Paine-Gibbons referred Jennifer to drug and alcohol treatment programs, and testified that Jennifer "never completed a single program" in the time that she worked with Jennifer.

¶ 11 Tashay Jenkins was David and Jennifer's DCFS caseworker from October 2009 to August 2011 and again from April 2012 until the termination proceedings. Jenkins testified that Jennifer and David were required to complete inpatient drug treatment as part of their DCFS services. She asserted that Jennifer initially refused inpatient treatment and was later discharged from a treatment facility for violating its rules. David refused inpatient drug treatment because he had to work in order to maintain his family's income.

¶ 12 George Husick was the case manager assigned to Victoria, Shayna, and Leyla's case from August 2011 to February 2012. Husick testified that the initial goal for the children was to return home in 12 months. Around December 28, 2011, however, the goal was changed to termination of parental rights. Husick testified that he concurred with that decision because "both parents had not completed services, were not engaged in services on a regular basis and \*\*\* visitations had been problematic."

¶ 13 On cross-examination, Husick testified that, "on numerous occasions," Jennifer and David gave him gifts and clothing to give to the children. Husick further testified that he



observed some visits between Jennifer and David and the children, and that the children were bonded with both Jennifer and David. He stated that "the children seemed excited" when they knew Jennifer and David were coming to visit them. During the visits, Husick observed Jennifer and David "read with the children, play games with the children, [and] play catch with the children." He saw David "help [Victoria] with her bike" and Victoria and Jennifer cook together. Husick testified that he never had to terminate a visit because of inappropriate actions by Jennifer or David. He further acknowledged that "it wasn't a frequent thing" for Jennifer or David to miss visits with the children.

¶ 14 Faruq Al-Amin, a Treatment Alternatives for Safe Communities (TASC) recovery coach, testified that Jennifer and David were his clients from February to October 2010. Al-Amin testified that Jennifer made progress "[a]t times" in her drug treatment but that she had "regressed" as of October 2010. He explained that Jennifer had been in and out of four or five different drug treatment programs, and that Jennifer placed blame for positive drug test results on others, including the lab and Al-Amin. Al-Amin further testified that David "made efforts to engage with DCFS and his employment" and "made sporadic progress with his substance abuse treatment services." According to Al-Amin, David engaged more actively in Alcoholics and Narcotics Anonymous meetings in June 2010 and continued this involvement through October 2010.

¶ 15 Khalid Scott, a clinical supervisor with TASC, monitored Jennifer's and David's recoveries after Al-Amin left TASC in October 2010. Scott testified that Jennifer "made some progress" in her treatment, "but she always relapsed." He further testified that David did not have positive drug test results while Scott was working directly with him, but that David was



discharged from a drug treatment program. Scott opined that David's relationship with Jennifer affected his recovery, and characterized David as "more participatory" in services than Jennifer.

¶ 16 Trina Townsend, a TASC recovery coach, was assigned to work with Jennifer and David between August 23 and December 19, 2011. Townsend testified that Jennifer made no progress in her recovery. In December 2011, she went to Jennifer's home to conduct the urinalysis but Jennifer "started yelling and screaming" and refused to take the test. Townsend testified that David complied with her requests to conduct urinalyses. David remained in constant contact with Townsend and attended outpatient groups. She indicated that David "appear[ed] to be motivated and sincere in regards to maintaining his sobriety." Townsend testified that, even though David tested positive for cocaine in October 2011, he "was in compliance" with his recovery.

¶ 17 Bobby Carbage testified that he was a substance abuse counselor at Peer Services, an outpatient substance abuse facility in Evanston, Illinois. Jennifer was Carbage's client from July 2011 to March 2012. Carbage testified that, in that time, Jennifer "didn't make progress" with her recovery, and characterized Jennifer as "disruptive" during group therapy sessions. Jennifer was discharged from Peer Services in March 2012 after she failed to attend the required sessions.

¶ 18 Lindsay Heimberg, a therapist, testified that she was assigned to assess Jennifer and assist her in working toward regaining custody of her children in February 2011. Heimberg testified that Jennifer admitted to testing positive in a urine drop in August 2011. In December 2011, Heimberg closed Jennifer's case because "[s]he failed [to attend] many sessions and she refused to do her drug drops." Heimberg testified that, during her sessions with Jennifer, Jennifer was "communicative" and "engaging," but she had a tendency to place blame on others.

¶ 19 Richard Simon, a psychotherapist, was assigned to provide therapy for Victoria and family counseling for Jennifer, David, and Diane because there "was a great deal of conflict



between Diane \*\*\* and Jennifer and David." Simon estimated that Jennifer and David participated in less than half of their scheduled sessions.

¶ 20 Melvin Herring served as Jennifer and David's parenting coach from the spring of 2009 until the autumn of 2011. Herring observed Jennifer and David interact with the children between 10 and 20 times. He testified that Jennifer and David had no deficits in their parenting skills other than their failure to attend coaching sessions. Herring further testified that both Jennifer and David were receptive to his suggestions and implemented the coaching tips that he gave them. Herring never witnessed any inappropriate interaction between Jennifer, David, and the children, and stated that the children seemed to enjoy being with their parents.

¶ 21 Allan Weiner, a therapist, testified that he worked with David from April 2011 to December 2011. At the time of his last session in December 2011, David was not making progress in therapy, "he was canceling or failing." David canceled four of his last nine scheduled sessions. Weiner testified that David relapsed in October 2011.

¶ 22 Barbara Ann Herman, a social worker at Peer Services, testified that David was her client from August 2011 until the date of the termination proceedings. Herman testified that David's highest priority was "to be a good father and have a relationship with his kids." She averred that, between August 2011 and February 2012, David had made progress on the treatment goals she set for him. Herman stated that David "was going to 12-step meetings, he had a sponsor that he had consistent communication with, he was talking about the issues and problems that would come up in his life and [he was] working towards resolving those issues." She further testified that, at the time of the hearing, David regularly attended therapy with her, and that he had "made a lot of progress" in developing ways to control his anger and reactions to others.



¶ 23 Herman acknowledged that David admitted to using cocaine in October 2011, but stated that David's immediate admission to relapsing showed "honesty and \*\*\* a sincere motivation to change." According to Herman, David also admitted to having a glass of wine in the winter of 2012 and in the summer of 2013.

¶ 24 The guardian *ad litem* called Diane as part of her case on behalf of the minors. Diane testified that she was Shayna and Leyla's grandmother and had acted as all three children's foster parent since 2009. Diane acted as Victoria's foster mother since Victoria was three-and-a-half years old, Shayna's since she was born, and Leyla's since she was eight weeks old.

¶ 25 Diane testified that, during the summer of 2010, Jennifer visited the children at Diane's home, at which time Jennifer brought a cup with liquid inside that smelled like beer. Diane also testified that, in August 2011, she asked Jennifer if she had taken any of Diane's mother's money. According to Diane, Jennifer "got very irate" and made a telephone call. David arrived and started "verbally attacking" Diane, who then called the police. Diane testified that, in April 2013, Jennifer and David got into an argument with each other in front of all three children. She asserted that Jennifer and David argued "very loud[ly]" and "were very abusive toward each other verbally." Diane testified that Victoria screamed and told her she could not breathe. Diane stated that it took Victoria 45 minutes to calm down after Jennifer and David left. On cross-examination, Diane conceded that, after these incidents, she continued to let Jennifer and David visit the children at her home. She never sought an order of protection after these incidents.

¶ 26 David testified on his own behalf. David testified that he visited his children as often as seven times per week and as infrequently as two times per week. Some visits would last all day long. David stated that, since 2009, he has provided his mother with financial assistance and purchased clothing, school supplies, and toys for the children. David also testified that he and



Jennifer paid for family activities, such as amusement park visits. According to David, Jennifer worked part time at a retail store from which she bought clothes for the children. David said that Jennifer helped out around his mother's house every time they visited. He further averred that Jennifer changed the children's diapers, prepared meals, helped clean up after meals, and dressed the children.

¶ 27 On December 9, 2013, the juvenile court found that David was unfit because he was addicted to drugs for at least one year prior to the commencement of the unfitness proceedings and because he failed to make reasonable progress toward the return of the children within nine months after the adjudication of neglect or abuse. The juvenile court found that Jennifer was unfit on all three grounds asserted by the State.

¶ 28 The best interest portion of the termination proceedings commenced on February 25, 2014. The State first called Tashay Jenkins, Jennifer and David's case manager at the time of the hearing, to testify. Jenkins testified that Victoria and Shayna had been in Diane's care continuously since October 2009 and Leyla had been in her care continuously since June 2010. She further testified that the minors' placement with Diane was appropriate and that there had been no signs of abuse, neglect, risk of harm, or corporal punishment to any of the three children.

¶ 29 Jenkins testified that Victoria was 10 years old at the time of the hearing. She was enrolled in the fourth grade and was not in special education classes. Jenkins rated Victoria's participation in individual therapy as satisfactory because Victoria actively participates in it. Jenkins did not have any concerns regarding Diane's ability to make sure that Victoria participated in therapy, and stated that Victoria had friends at school.

¶ 30 With respect to Shayna, who was five years old at the time of the hearing, Jenkins testified that she was enrolled in preschool and showed no developmental, medical, or



educational concerns. She noted that Shayna had friends in preschool. In regard to Leyla, who was three years old at the time of the hearing, Jenkins similarly averred that the child did not have any special needs, medical conditions, developmental issues, or educational concerns. According to Jenkins, Shayna and Leyla attended the same preschool class.

¶ 31 Jenkins observed the children interact with each other about once a month since 2009, and stated that the children were all "very loving and affectionate towards each other" and "very closely attached to each other." Victoria told Jenkins in November or December 2013 that she loved her siblings and liked living with them.

¶ 32 Jenkins also observed the children interact with Diane approximately once a month since 2009, and testified that all three children were "closely bonded to [Diane]." Jenkins noted that Shayna and Leyla had been living with Diane since they were babies. She further observed Diane help Victoria with her homework and talk to Victoria about growing up. Diane had enrolled Victoria and Shayna in summer camp and dance classes in the past, and had recently enrolled all three children in ice skating lessons. Diane also had the children participate in religious holidays, including Jewish holidays, Christmas, and Easter. Jenkins testified that Diane had signed a permanency commitment.

¶ 33 Jenkins stated that DCFS recommended that both Jennifer and David's parental rights be terminated. She explained that the reason for that decision was that "the children are in a safe and nurturing pre-adoptive home and \*\*\* that would be the best goal for the children."

¶ 34 According to Jenkins, Victoria told her that she loved both Jennifer and Diane and that she felt "kind of in the middle" about living with Diane permanently. Victoria also told Jenkins that seeing arguments between Jennifer, David, and Diane made her upset. Jenkins testified that Shayna and Leyla spoke positively about their contact with Jennifer and David.



¶ 35 Jenkins further testified that, since October 2013, both Jennifer and David had called her and expressed concerns about their being able to maintain a relationship with Diane. Jenkins had concerns about Jennifer and David's relationship with Diane because, throughout the case, there had been periods where they did not get along.

¶ 36 Jenkins had supervised Jennifer and David's visits with the children throughout the life of the case. She was aware that Jennifer and David had taken the children on family outings, helped cook dinner, put the children to bed, and attended Victoria's soccer games. Jenkins was also aware that Jennifer and David had provided the children with gifts and had assisted Diane in caring for the children.

¶ 37 With respect to Vincente, Jenkins testified that he was not able to complete services to reunite with Victoria as he was incarcerated. Jenkins said that Victoria had not talked to her about her relationship with Vincente.

¶ 38 Diane testified that she wanted to adopt Victoria, Shayna, and Leyla, explaining that she loved all three children and believed she could give all of them a good home. Diane was 71 years old and was employed as a certified addiction counselor at the time of the hearing. She and the children lived in Skokie, Illinois and Diane planned to remain in that community.

¶ 39 Diane further stated that Victoria had performed very well in school since moving in with her, but had "a lot of fears" that necessitated weekly therapy. According to Diane, Victoria was afraid to go to the bathroom or to take the garbage out by herself when she first entered Diane's custody. Diane said that these behaviors had improved after Victoria began therapy, and noted that Victoria played in the school band, played soccer, and ice skated.

¶ 40 Diane testified that neither Shayna nor Leyla were in therapy, and that Shayna would start kindergarten in the fall of 2014. Shayna was enrolled in dance and ice skating lessons and



Leyla was in ice skating classes. Diane testified that her other son and his wife had two children with whom Shayna and Leyla were close, and who visited frequently. Diane also testified that Victoria, Shayna, and Leyla had some contact with Jennifer's older children, who were 15 and 16 years old.

¶ 41 Diane testified that she and Jennifer had an "adverse relationship" and that Jennifer was "not one of [her] favorite people." When asked if she would allow the children to have contact with Jennifer if the court terminated her parental rights, Diane stated, "[p]robably. Depending on her demeanor and her behavior and if she's not using drugs or alcohol, yes, I would." Diane explained that she had more concerns over Jennifer maintaining sobriety than David.

¶ 42 Diane further averred that she spoke to David about the children daily. She said that all three children "really love[d] him," and that, if the court terminated David's parental rights, she would continue to permit the children to see him provided that he did not resume using drugs and alcohol. Diane testified that she had called the police in the past due to David's "anger issues," most recently in November 2013.

¶ 43 When asked whether she had considered how she would discuss the termination of Jennifer and David's parental rights with the children, Diane stated, "I haven't given it any thought and I think David would always be daddy no matter what's written. He's their father and that will never change." Diane also stated that Jennifer would "always be their mother."

¶ 44 Diane testified that David and Jennifer visited the children about two or three times a week. She said that the children enjoyed spending time with David, who played with the children, watched movies with them, and completed puzzles with them. Jennifer cooked with the children but also "watche[d] a lot of television" while she would visit. Diane testified that the children told both Jennifer and David that they loved them.



¶ 45 Diane claimed that David had "[n]ot really" provided financial assistance to the household. She acknowledged that David paid for Victoria's cell phone, contributed to arranging parties for the children and that he attended those parties.

¶ 46 According to Diane, the children celebrated Jewish holidays such as Passover and Yom Kippur, as well as Christian holidays like Christmas and Easter. Diane was Jewish but Jennifer was Catholic.

¶ 47 Diane testified that she had two backup plans for the children should anything happen to her. The first were friends of Diane's who know the children "very well" and who visit frequently. This family lived in Colorado. The other was Diane's goddaughter and her husband, who lived on the northwest side of Chicago.

¶ 48 Moreover, Diane stated that she voluntarily signed a permanency commitment in August 2013, and was aware of the concept of guardianship. Diane believed that, with adoption, she "would have more options as to making decisions for them as far as school, religion." Diane did not know what the nature of Jennifer and David's parental rights would be if she were the children's guardian.

¶ 49 Diane testified that she permitted Vincente to have contact with Victoria. She said that he called approximately once every 10 days, and that Victoria "enjoy[ed] talking to" Vincente. Diane stated that Vincente "seem[ed] like he ha[d] a great interest in Victoria and he want[ed] what's best for her." She testified that Vincente sent Victoria cards and letters that she "like[d] to receive," and opined that Victoria was "grateful that she has a biological father." Diane said that, if the juvenile court terminated Vincente's parental rights, she would permit him to contact Victoria. She explained that it was important to Victoria to have contact with Vincente because he provided her with a sense of identity and connected her to her Mexican heritage.



¶ 50 Joanna Zakhen, a therapist with One Hope United, testified that Victoria was her client from October 2011 until October 2013. She testified that Victoria "had a lot of anxiety" when she first met her, and that Victoria had made "[m]inimal progress" in coping with that anxiety because she "tend[ed] to avoid when incidences of trauma [were] discussed." Zakhen engaged Victoria and Diane in family therapy several times to help Victoria identify the triggers for her anxiety, and did not observe anything out of the ordinary in Diane's relationship with Victoria. While Victoria and Diane had "issues," Zakhen asserted that these problems were "always appropriate." Zakhen opined that Victoria was stable in her placement with Diane, and noted that Victoria referred to Diane's house as her home.

¶ 51 Zakhen further testified that Victoria told her that "seeing her parents fight, seeing her mom and her grandma fight \*\*\* made her feel sort of in the middle, like she was being pulled." According to Zakhen, Victoria felt "protective" of Jennifer and that Victoria "felt almost like she was in a caregiver role" with Jennifer. Zakhen noted that Victoria was bonded to Jennifer and loved her. When Diane and Jennifer argued, Victoria felt "stuck in the middle of any disagreement that they would have." Zakhen opined that Victoria "felt like [Jennifer] needed taking care of," and testified that Victoria "always identified [David] as dad." The therapist said that Victoria "had positive things to say about her relationship with [David]," and described activities that they did together.

¶ 52 Zakhen stated that Victoria had dealt with the issue of her being darker-skinned than Diane, Shayna, or Leyla. The therapist believed that Victoria's contact with Jennifer's older children "helped her feel a little bit more in touch with that part of her identity and that part of her life." Zakhen then posited that Victoria may have identity issues when she reached adolescence.



¶ 53 Tennile Ray, a therapist at One Hope United, testified that she had been working with Victoria since November 2013. Ray testified that Victoria's treatment goals were to learn to express her emotions to be able to examine the trauma she experienced in entering the juvenile court system. Ray asserted that Victoria improved in these areas since November 2013.

¶ 54 Ray said that Victoria wanted to live with Diane; noting that "[s]he calls that home." According to Ray, Victoria and Diane were bonded to one another and "that they love one another." Ray further stated that Victoria told her that Jennifer also loved and cared for her. Victoria told Ray that Jennifer "is someone who does fun things with her and is like a sister to her and also supports her." Ray said that Victoria's bond with Diane was not stronger than her bond with Jennifer, but it was different. She asserted that Victoria viewed Diane as a parent because Victoria saw Diane as the person responsible for caring for her on a day-to-day basis. However, Ray had never seen anything inappropriate in Jennifer's interactions with Victoria.

¶ 55 David testified that he wanted to maintain his parental rights, noting that he did not have any issues with the way that Diane had cared for Shayna or Leyla. He testified that he and Jennifer visited the children between four and seven days every week and that some of these visits lasted all day. David said that he and the children engaged in different activities together. He further testified that Victoria had confided in him regarding arguments between Jennifer and Diane, but said that he had been able to work out any conflicts with his mother. He explained that his therapist helped him to learn how to control his emotions toward his mother.

¶ 56 David further testified that he provided Diane with financial support since she began serving as the children's foster parent. He said that he bought groceries and clothing for the children, paid for activities they were involved in, and had paid for Victoria's cell phone.



¶ 57 Vincente testified that he spoke to Victoria once a week and sent her gifts, cards, and letters. He also stated that he and Victoria were working on writing a book together. Vincente had spoken to Victoria about her cultural background and stated that she "was very proud to learn of her Mexican heritage." He spoke to Victoria and wrote her letters in Spanish.

¶ 58 On April 17, 2014, the juvenile court terminated Jennifer and David's parental rights. In making its findings, the court discussed each of the factors listed in the Juvenile Court Act for determining the best interests of each child. 705 ILCS 405/1-3(4.05) (West 2014). With respect to the first factor, the minors' physical safety, including food, shelter, health, and clothing, the court found that Diane had provided the children a home "consistently since 2009." The court noted that Victoria told Ray that she felt safe in Diane's home. The court found that Victoria had experienced trauma in living with Jennifer and David. The court found that Shayna and Leyla "appear[ed] happy, safe, [and] well cared for in the home of Diane."

¶ 59 With respect to the second factor, the development of the minors' identity, and the third factor, their familial, cultural, and religious backgrounds, the court noted that Victoria had expressed concerns regarding her personal identity. Specifically, the court noted that Victoria had darker skin than her siblings due to her biological father's Mexican heritage. The court found that Diane had facilitated Victoria's awareness of her Mexican heritage, as well as her Jewish and Catholic heritage. The court found that Vincente's presence in Victoria's life was significant, as Victoria was excited to receive things he had sent her. With respect to Shayna and Leyla, the court noted that they had been living with their paternal grandmother full time, whereas Jennifer and David only "visit[ed] approximately weekly, [but] that on some occasions the visits were more."



¶ 60 With respect to the fourth factor, the minors' senses of attachment, the court found that Victoria was valued in Diane's home and in her new relationship with Vincente. The court found that Victoria's attachment to Jennifer was more in line with that of a sibling than a parent. The court also found that Victoria's sense of security, familiarity, and continuity of affection was strongest in Diane's home. The court found that Vincente had maintained a continuity of affection with Victoria, as he had consistently reached out to Victoria, helped her to learn Spanish, and helped her in writing a book. Further, the court found that the least disruptive placement for Victoria was in Diane's home, taking judicial notice of the testimony from the fitness hearing that Jennifer and David started arguments in Victoria's presence. The court also found that, with respect to Shayna and Leyla, "the quality of the attachments and the bond seems to rest with the paternal grandmother more so than with the parent." In doing so, the court noted that it was Diane who maintained day-to-day care for Shayna and Leyla, rather than Jennifer and David.

¶ 61 With respect to the fifth factor, the minors' wishes and long term goals, the court found that Victoria had expressed a desire to remain in Diane's care and had expressed excitement about her relationship with Vincente. The court stated that Victoria, "from the evidence that has been adduced as part of the hearing, ha[d] not indicated wishes and long-term goals with regard to [Jennifer]." However, the court did note that Victoria was bonded with Jennifer. With respect to Shayna and Leyla, the court noted that there was no evidence that they had expressed a desire to live with Diane or with Jennifer and David. The court, however, looked "to the evidence of their behaviors, their development, their well being in the care and in the home in which they reside, a home in which they receive the continuity of affection without disruption."



¶ 62 Turning to the sixth factor, the minors' community ties, the court noted that Victoria had lived with Diane in her Skokie home since 2009. She had friends at school and was involved in activities. The court noted that Shayna and Leyla attended the same preschool, and that Diane's other son and his children visited with the children.

¶ 63 With respect to the seventh factor, the minors' need for permanence, the court cited Victoria's bond to Diane, her siblings, and Vincente. The court found that there was "not as much evidence as to the ongoing \*\*\* relationship between the biological mother and the minor Victoria but \*\*\* there is a bond." The court stated that this factor weighed in Diane's favor with respect to Shayna and Leyla, but did not cite evidence for that conclusion.

¶ 64 With respect to the eighth factor, the uniqueness of the family and the minors, the court noted that Victoria would remain in the care of her paternal grandmother while still having contact with Jennifer, David, and Vincente. The court stated that this factor weighed in Diane's favor with respect to Shayna and Leyla, but did not cite evidence for that conclusion.

¶ 65 With respect to the ninth factor, the risks attendant to the minors being in substitute care, the court noted that Diane's age, 71, was a risk factor. The court found that Diane's "level of commitment and the evidence as to her own personal health and well being show that \*\*\* there are less risks with the minor remaining and residing in the care of [Diane]."

¶ 66 As to the final factor, the preferences of the persons available to care for the minors, the court noted that Diane testified that she wanted to adopt Victoria. While the court noted that Diane seemed unaware of the option of guardianship, the court found that she "ha[d] signed a permanency commitment and was firm in her desire to adopt all three minors."

¶ 67 The court found that it was in Victoria's, Shayna's, and Leyla's best interests for Jennifer's parental rights to be terminated. The court found that it was not in Victoria's best interests for



Vincente's parental rights to be terminated. The court also found that it was in Shayna's and Leyla's best interests for David's parental rights to be terminated, although it noted that that conclusion was "one not easily arrived at." The court entered a permanency goal of private guardianship for Victoria and a permanency goal of adoption for Shayna and Leyla. Jennifer and David appeal.

¶ 68

## II. ANALYSIS

¶ 69 Respondents contend that the trial court's best interest determination was against the manifest weight of the evidence and that the public guardian acted under a conflict of interest. The State and the public guardian both contend that the court's findings were supported by the evidence at the best interest hearing and that the public guardian did not suffer from a conflict of interest. The public guardian also urges us to dismiss respondents' appeal because their brief does not comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). We first examine the public guardian's Rule 341(h) claim, then examine respondents' contentions of error.

¶ 70

### A. Rule 341(h)

¶ 71 The public guardian asks this court to dismiss respondents' appeal because their brief omits a points and authorities page, a statement of facts, and citations to supporting authority. Illinois Supreme Court Rule 341(h) requires that an appellant's brief contain, *inter alia*, "[a] summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the Argument," a "Statement of Facts, which shall contain the facts necessary to an understanding of the case," and "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(1), (6), (7) (eff. Feb. 6, 2013). This court may dismiss an appeal for failure to comply with Rule 341(h) where a brief "is so inadequate in its compliance with the rules and



the law as not to justify consideration of the parties' position.' " *People v. Carrel*, 116 Ill. App. 3d 358, 360-61 (1983) (quoting *In re Estate of Kunz*, 7 Ill. App. 3d 760, 763 (1972)).

¶ 72 Respondents' brief does not comply with Rule 341(h). There is no page listing the points made or authorities cited in the brief. The section of the brief entitled, "Introduction and Statement of Facts" is only two pages long. It does not include any of the testimony elicited at any stage of the proceedings or the substance of the trial court's findings. Instead, it merely lists the dates when various orders were entered. In light of the length of the record in this case—24 volumes—counsel's failure to include a statement of facts is inexplicable.

¶ 73 Despite these failings, we decline to dismiss respondents' appeal. The outcome of this appeal impacts respondents' fundamental due process rights as parents. *In re Brandon L.*, 348 Ill. App. 3d 315, 320 (2004). Respondents are entitled to have their appeal heard, regardless of their attorney's failings in preparing a brief on their behalf. Where respondents have made assertions necessitating citation to authority but fail to cite such authority, we will construe the failure to cite such authority against respondents. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). We now turn to the merits of respondents' appeal.

¶ 74 B. Best Interest Determinations

¶ 75 A proceeding to terminate a party's parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)) occurs in two stages. First, "the State must \*\*\* establish that the parent is 'unfit' under one or more of the grounds set forth in the Adoption Act." *In re D.T.*, 212 Ill. 2d 347, 352 (2004). Second, "[i]f the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated." *Id.* In this case, respondents do not challenge the trial court's findings of unfitness. Instead, they allege that the



trial court erred in concluding that terminating their parental rights would be in the best interests of Victoria, Shayna, and Leyla.

¶ 76 "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* at 364. In determining a child's best interests, the trial court must apply the 10 factors set forth in Section 1-3(4.05) of the Juvenile Court Act of 1987: (1) the physical safety and welfare of the minor, including food, shelter, health, and clothing; (2) the development of the minor's identity; (3) the minor's background and ties, including familial, cultural, and religious; (4) the minor's sense of attachments; (5) the minor's wishes and long-term goals; (6) the minor's community ties, including, church, school, and friends; (7) the minor's need for permanence, including his or her relationships with parent figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to the minor entering and being in substitute care; and (10) the preferences of the persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West 2014). The State bears the burden of proving that termination of parental rights and adoption is in the child's best interests by a preponderance of the evidence. *D.T.*, 212 Ill. 2d at 366.

¶ 77 "A trial court's best interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence." *In re B'yata I.*, 2014 IL App (2d) 13055-B, ¶ 41. "A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent." *Id.* "In cases involving the termination of parental rights, each case is *sui generis* and must be decided based on the particular facts and circumstances presented." *In re G.L.*, 329 Ill. App. 3d 18, 26 (2002). "Because each termination of parental rights case is unique, factual comparisons to other cases are inappropriate." *Id.* "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings" and "[w]e



will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re April C.*, 345 Ill. App. 3d 872, 889 (2004).

¶ 78 Respondents first argue that the trial court's best interest determinations were against the manifest weight of the evidence because they treated Victoria differently from Shayna and Leyla. Respondents contend that, by not terminating Vincente's parental rights, the trial court "established \*\*\* a situation where one of three siblings who have been living together virtually all of their lives will never be adopted by the foster mother with whom they have been living." Respondents assert that the trial court's ruling created a risk that Victoria would be separated from Shayna and Leyla if Diane died before the children reached the age of majority or if Vincente regained custody of Victoria.

¶ 79 We disagree that the trial court disregarded the risk of Victoria being separated from her sisters. The trial court applied each of the necessary factors in determining the minors' best interests and cited evidence supporting its conclusions. Although not terminating Vincente's parental rights created a risk that Victoria could be separated from her sisters if Diane passed away, the trial court considered this possibility in making its ruling. The trial court noted the fact that Diane's "personal health and well being" showed that any risks posed by her age were insubstantial. The trial court also considered Victoria's close bond with her sisters in its findings. In doing so, it found that the benefits resulting from Victoria's relationship with Vincente—particularly with respect to her concerns about her cultural identity—outweighed the risks attendant to maintaining Vincente's parental rights. Based upon the evidence adduced at the termination proceedings, we cannot say that this conclusion was against the manifest weight of the evidence.



¶ 80 Respondents also claim that the trial court's ruling showed that it applied differing standards to them and Vincente, as the evidence showed that respondents had more contact and engagement with the minors than Vincente had with Victoria. Contrary to respondents' contention, the trial court elected not to terminate Vincente's parental rights because of the positive impact he had upon Victoria, not because of the quantity of his contact with her. While Vincente had less contact with Victoria than Jennifer, that was because Vincente was incarcerated and had only recently learned that Victoria was his daughter. The trial court found that Victoria's excitement of learning her biological father's identity and Vincente's efforts at being involved in Victoria's life all militated against terminating his parental rights. The trial court also found that Vincente's relationship with Victoria benefitted Victoria's concerns about her cultural identity. In light of this evidence, we cannot say that the trial court applied differing standards to Vincente and respondents.

¶ 81 Respondents next contend that the trial court's best interest determinations were against the manifest weight of the evidence because "[t]here was an abundance of evidence that both [respondents] have been integral in the lives of all three minors from the time before they became involved with DCFS up to the end of the Best Interest Hearing." Respondents note that there was evidence that they frequently visited the minors, provided the minors with financial assistance, and maintained a positive relationship with the minors.

¶ 82 We recognize that there was evidence that David and Jennifer had a positive, active relationship with all three minors. The evidence also showed that respondents had a history of drug and alcohol addiction and that Jennifer struggled to maintain her sobriety. All of the evidence demonstrated that Diane had provided the minors with excellent care and that the minors were closely bonded to her. In fact, Shayna and Leyla had known only Diane as their



primary caregiver as they had been in her custody since they were infants. Diane testified that respondents would continue to be permitted to have contact with the minors provided that they maintained their sobriety, raising the possibility that the minors could maintain their bond with their biological parents. The trial court was best-positioned to assess the credibility of Diane's testimony. *April C.*, 345 Ill. App. 3d at 889.

¶ 83 The evidence also showed that Diane's relationship with the minors was closer to a parental relationship than respondents'. Victoria's therapists opined that her relationship with Jennifer was closer to that of a relationship between siblings and that Victoria felt that Diane was the person primarily responsible for her welfare. Diane had provided for the minors' physical, educational, and emotional well-being for several years. In fact, she even enrolled the minors in extracurricular activities and sports and ensured that Victoria attended her therapy sessions. Although David testified that he and Jennifer visited the children at least four times a week, Diane testified that they only visited the children about two or three times a week. Further, while David testified that he provided significant financial support for the children, Diane said that David had "[n]ot really" provided such financial assistance to her household. As the trier of fact, the trial court was in the best position to resolve this conflicting testimony and we defer to its resolution of this conflict. *April C.*, 345 Ill. App. 3d at 889. We cannot conclude that the trial court's ruling neglected respondents' involvement in the minors' lives.

¶ 84 Respondents lastly contend that the trial court "focused, improperly, on fitness factors when rendering [its] decision." Respondents fail to cite any portions of the record supporting this contention. To the contrary, the record demonstrates that the trial court carefully considered each of the factors necessary to a best interest finding and discussed evidence supporting its



conclusions with respect to those factors. We conclude that the trial court's decision that termination of respondents' parental rights was not against the manifest weight of the evidence.

¶ 85

#### C. Conflict of Interest

¶ 86 Respondents also assert that the Assistant Public Guardian representing the minors suffered from a conflict of interest because she actually represented Diane's interests as foster mother. The State and public guardian contend that there was no conflict of interest in this case.

¶ 87 We first note that respondents fail to cite any legal authority for the proposition that they may assert deficiencies in the minors' representation as a contention of error. Respondents cite no case in which a parent whose rights have been terminated asserted that an attorney who did not represent them suffered from a conflict of interest. Indeed, in those cases finding reversible error for conflicts of interest in a termination proceeding, the conflicted attorney actually represented both a parent and child at separate points in the proceedings. *E.g.*, *People v. Lackey*, 79 Ill. 2d 466, 467-68 (1980); *In re Quadaysha C.*, 409 Ill. App. 3d 1020, 1021-22, 1025 (2011); *In re Paul L.F.*, 408 Ill. App. 3d 862, 864-65 (2011); *In re Darius G.*, 406 Ill. App. 3d 727, 728 (2010); *In re S.G.*, 347 Ill. App. 476, 478 (2004). Unlike those cases, the allegedly conflicted attorney in this case never represented respondents. She only served as the minors' attorney. In light of respondents' failure to cite authority to support their standing to assert that the minors' representation was deficient, respondents have forfeited this claim on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2010).

¶ 88 Even assuming that respondents had not forfeited this claim, we conclude that there was no prejudicial conflict of interest in this case. "This court has held that a *per se* conflict of interest requiring reversal of a termination of parental rights [arises] when the same attorney appear[s] on behalf of both the [parent] and the minor at different times during the same



proceeding." *In re Quadaysha C.*, 409 Ill. App. 3d 1020, 1022 (2011). When such a *per se* conflict arises, "[p]rejudice is presumed and respondent need not demonstrate that the conflict contributed to the judgments entered against her." *Darius G.*, 406 Ill. App. 3d at 739. If a party cannot establish a *per se* conflict of interest, he or she must establish an actual conflict of interest that adversely affected counsel's performance. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 33. "To establish an actual conflict of interest, respondent must point to some specific defect in counsel's strategy, tactics, or decision making attributable to the alleged conflict." *Id.*

¶ 89 Respondents do not contend that the minors' attorney suffered from a *per se* conflict, as the record does not show that the guardian represented any other parties to the proceedings other than the minors. Instead, respondents contend that the guardian acted under an actual conflict of interest because the record shows that the attorney represented Diane's interests rather than the minors' interests. As evidence for this contention, respondents note that the guardian referred to Diane as her "client" during the termination hearing, the guardian opposed a motion filed by respondents' counsel to amend a case management order to include a witness that would have impeached Diane's testimony, and the guardian did not file a notice of appeal from the termination of respondents' parental rights on behalf of the minors.

¶ 90 We disagree with respondents' claim. Although minors' counsel once referred to Diane as her "client" during one of the termination hearing dates, she also referred to Diane as a "witness" several times on the same date:

"MS. KANE [Assistant Public Guardian]: Before we begin the testimony for today, I know previously we had talked about the fact that the State anticipates being able to conclude their case in chief today. It would then fall to me to go forward with my case in chief. I do have one *witness*, because of child care issues, she is not able to be here



until about 2:30 or so. I am hopeful that she will make it at the time we need her if we get to her today. I just wanted to make the Court aware that I made every effort to get my *client* here, but because of child care issues, she was not able to be here until later this afternoon.

MR. HORWITZ [respondents' counsel]: I don't believe this witness is a client of hers.

THE COURT: I don't know who the person is, but if you are indicating it is a witness \*\*\* I believe the State, there were three witnesses here, so it would appear that, timewise [*sic*], it may work out.

MS. KANE: Yes. I just wanted to let the Court know that I do anticipate having a *witness* here today and that *witness* had child care issues." (Emphases added.)

This suggests that the guardian simply was mistaken in referring to Diane as her client.

¶ 91 The record also does not show that the minors' attorney's actions prejudiced the minors. Respondents' motion to amend the case management order during the unfitness portion of the termination proceedings sought to add a witness who would rebut some of Diane's anticipated testimony regarding events occurring after August 30, 2013. At the hearing on the motion, the public guardian noted that respondents' motion was "moot" because she did not intend to ask Diane about any events occurring after May 3, 2013. The court stated that "the need to amend the case management conference order is no longer a necessity." When Diane testified during the fitness portion of the hearing, she did not testify about any of the events which respondents sought to rebut. The public guardian's opposition to this motion did not prejudice the minors as respondents contend.



¶ 92 With regard to the public guardian's decision not to file a notice of appeal, there is no indication that the minors desired to file an appeal or that an appeal would have been in their best interests. Respondents' argument is premised upon their claim that the trial court's decision to terminate their parental rights, but not Vincente's, was not in the minors' best interests. As we concluded above, the trial court's ruling regarding the best interests of the minors was not against the manifest weight of the evidence. See *supra* ¶¶ 75-84. Respondents cannot show prejudice resulting from the guardian's failure to file a notice of appeal where the argument they contend that the guardian should have raised lacked merit. Under these circumstances, respondents have not shown that any conflict in the public guardian's representation necessitates reversal.

¶ 93 III. CONCLUSION

¶ 94 For the reasons stated, we affirm the judgment of the trial court.

¶ 95 Affirmed.