2013 IL App (4th) 121009-U

NOS. 4-12-1009, 4-12-1010 cons.

FILED
March 12, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: H.H., A Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner,	)	Sangamon County
v. (No. 4-12-1009)	)	No. 07JA40
JENNA HARLOW,	)	
Respondent-Appellee,	)	
and	)	
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	)	
Appellant.	)	
_____	)	
In re: A.H., a Minor,	)	No. 08JA1
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner,	)	
v. (No. 4-12-1010)	)	
JENNA HARLOW,	)	
Respondent-Appellee,	)	
and	)	
THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	)	Honorable
	)	Esteban F. Sanchez,
Appellant.	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision it was in the children's best interests to retain custody with the long-term foster parent and transfer guardianship from DCFS to the long-term foster parent was not against the manifest weight of the evidence.

¶ 2 In June 2009, the trial court removed custody of H.H. (born January 22, 2007) and A.H. (born January 5, 2008) from the Department of Children and Family Services (DCFS or the

Department) in favor of respondent, Jenna Harlow, the children's long-term foster parent. The Department remained as the children's guardian. In September 2012, the court denied the State's motion to return custody of the children to DCFS and transferred guardianship of the two children to Harlow. The Department appeals, arguing the following: (1) the court erred in granting Harlow guardianship of the children because Harlow's oral request for guardianship was not in writing and did not give DCFS notice and an opportunity to be heard; (2) the court erred in granting Harlow guardianship because her actions showed she could not be trusted to oversee the children's medical and psychological health; and (3) the court erred in not returning custody of the children to DCFS because they were victims of medical abuse. The Department also requests this court strike Harlow's brief for failing to cite sufficiently to the record in the argument portion of her brief. At oral argument, Harlow's counsel acknowledged the deficiencies with her brief. Because of the importance of the issues raised and because the failure to cite to the record did not impede our ability to review the case, we decline to strike Harlow's brief. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. How H.H. and A.H. came into Harlow's Care

¶ 5 H.H. was taken into protective custody by the Department after her biological mother stated she was having thoughts of smothering H.H.'s face when she cried. H.H. was placed in licensed foster care on February 15, 2007. H.H.'s biological mother admitted using crack cocaine once while she was pregnant with H.H. She also acknowledged she had been psychiatrically hospitalized four times when she was 15 years old.

¶ 6 On January 5, 2008, A.H., a sibling to H.H., was born. A.H. was promptly taken into protective custody because R.H., the birth mother of H.H. and A.H., had not made progress

in correcting the problems which required H.H. to be brought into care. A.H. was placed with foster parent Jenna Harlow on January 7, 2008. On February 22, 2008, H.H. was transferred to Harlow from her initial foster placement.

¶ 7 On February 20, 2008, R.H. participated in a psychological evaluation and was diagnosed with adjustment disorder, mood disorder not otherwise specified (NOS) with psychotic features, posttraumatic stress disorder (chronic), borderline intellectual functioning, and schizotypal and borderline personality traits.

¶ 8 According to the dispositional report filed on July 28, 2008, H.H. and A.H. were residing in a licensed, traditional foster home (Harlow's). H.H. was receiving "early intervention" services to address issues of physical development and socio-emotional status. A.H. had also been accepted for "early intervention" services to address issues of sensorimotor and physical development.

¶ 9 A family service plan filed with the trial court in February 2009 noted the following:

> "[H.H.] continues to reside in a licensed, traditional foster home with her sister [A.H.] [H.H.] continues to receive Early Intervention services to address her physical development including hearing and vision, and socio-emotional development. [H.H.] is receiving physical therapy but is no longer receiving occupational therapy. Recently [H.H.] was diagnosed with some food allergies and was given the diagnosis of failure to thrive due to her inability to gain and sustain weight. [H.H.] continues to

exhibit a strong bond towards her foster parent and continues to adjust well to her foster home. [H.H.] continues to grow and develop strong relationships with her foster parent and her sister [A.H.]

[A.H.] continues to reside in a licensed, traditional foster home with her sister, [H.H.] [A.H.] appears to be a happy and healthy child. [A.H.] was accepted for Early Intervention Services to address her sensorimotor development and physical development, including vision and hearing. [A.H.] continues to adjust well in the foster home and continues to develop her relationships with her foster parent and her sister, [H.H.]."

¶ 10 B. Emergency Petition to Return Children to Foster Parent

¶ 11 In May 2009, the guardian *ad litem* (GAL) for the children filed a report with the trial court stating he visited Harlow's home on May 7, 2009. He noted the home appeared to be "a very safe and positive environment" for A.H. and H.H. who appeared to be "very happy and sufficiently cared for." According to the report, the GAL felt certain H.H. and A.H. "will grow up in a very loving and caring environment if allowed to stay with Ms. Harlow." The GAL noted it was his opinion the children's best interests would be served by remaining in the permanent care of Harlow.

¶ 12 On June 24, 2009, the GAL filed a petition for an emergency hearing after two caseworkers removed H.H. and A.H. from Harlow's care on June 22. According to the petition, Harlow had cared for and nurtured these two children as if they were her own and intended to

seek adoption if the biological parents' parental rights were terminated. Harlow took in C.H., a sibling to H.H. and A.H., on May 27, 2009. Harlow had expressed concern to Catholic Charities before agreeing to take C.H. because she did not know if she could adopt a third child. Harlow was a single parent and had her own 11-year-old daughter, J.H., in addition to H.H. and A.H. On June 15, 2009, Harlow took C.H. to the emergency room after she was choking, gagging, and turning blue. C.H. was admitted to the hospital. On June 22, 2009, two caseworkers removed H.H. and A.H. from Harlow's care. The next day, C.H. was released into the protective custody of Catholic Charities. The GAL stated he felt strongly the children's best interests would be served by returning them to Harlow, with the goal remaining adoption of H.H. and A.H.

¶ 13 On June 25, 2009, a hearing was held on the emergency motion. The GAL noted Harlow had cared for H.H. and A.H. over the past year and a half. According to the GAL, the reports prepared by the caseworkers had not mentioned a single allegation of any problem with Harlow's care of the two girls. Instead, the records showed the children were thriving in Harlow's home.

¶ 14 The GAL noted Harlow received a call on May 25, 2009, stating C.H., a sibling to H.H. and A.H., had been born on May 24. Catholic Charities wanted to place the child with Harlow. Someone from Catholic Charities told Harlow C.H. was a healthy child. Harlow expressed significant reservations and told them she could not afford to take on another child. Harlow asked whether she could take the child pursuant to a 14-day placement notice, which would require DCFS to place the child in another home within 14 days if Harlow asked for that to happen. Harlow was told this was acceptable and took C.H. into her home.

¶ 15 Harlow then discovered C.H. was not a healthy baby. The day after she took C.H.

into her home, Harlow called her caseworker at Catholic Charities, Brooke Budny, to see when she could put in the 14-day removal notice for C.H. Budny asked if she did not want the girls. Harlow said she wanted to give a 14-day notice on just C.H., not the other two children. Budny told Harlow Catholic Charities and DCFS would have given her a 14-day notice on H.H. and A.H. had she not agreed to take C.H. When Budny told her this, Harlow said she would keep the baby.

¶ 16 Harlow took C.H. to her own pediatrician, Dr. Christina Branham, who acquired the birth records which showed C.H. had a heart murmur and other medical issues. C.H. was hospitalized in June 2009. During her hospitalization, Harlow received a call from her caseworker at Catholic Charities saying Catholic Charities was going to remove all three children from her care.

¶ 17 Before making its decision on the GAL's emergency motion, the trial court noted H.H. and A.H. had been with Harlow for close to two years. The court also noted the GAL's report, filed prior to the court's permanency hearing on May 11, 2009, indicated he observed the children and they were well taken care of, in a loving environment, and appeared well-adjusted. In addition, the court referred to a permanency review report filed in December 2008, that indicated the children were doing well with Harlow. According to the court, "from all indications[,] it appears that the two children have a healthy and happy life in the home of Ms. Harlow."

¶ 18 The trial court found Harlow was considered a potential placement for C.H., even though H.H. and A.H. had no connections with C.H. other than sharing the same biological mother. Harlow initially declined the placement. The court then noted Harlow took C.H. into

her home after she was told she could file a 14-day notice seeking to have C.H. removed for the reasons she was initially reluctant to take the placement. When she asked to file a 14-day notice, Harlow was told Catholic Charities would take all three children, not just C.H. After C.H. was hospitalized, DCFS opened an investigation on Harlow with regard to C.H. A.H. and H.H. were also removed from Harlow's home. The court noted

> "because [Harlow] felt she had no choice [but to keep C.H.], [she] now faces an investigation by the Department of Children and Family Services with regard to the—her alleged mistreatment of [C.H.] [B]ut the Department, for some reason, even though there has been no indication from the court file that these children, [H.H.] and [A.H.], were mistreated or in any way lacking healthcare, lacking in proper food and lacking in proper development were also removed, and I wonder if when that was done, looking at the factors that I just enumerated, I wonder if the decision to remove—those factors—to remove the children took into consideration the factors that everybody has to consider when determining what is in the best interest of the children.
>
> At best I would say that if they were considered, they were misapplied. At worst, I would say that they were disregarded, because for the life of me I cannot understand how removing two children that have been in a home for a year and a half, who are developing well, served the best interests of those children so that

one child could be provided for.

That, I think, is patently unfair to Ms. Harlow, but above all is patently unfair to the two children here, [A.H. and H.H.]

The evidence that has been presented to me, I believe, establishes at least probable cause to believe what [the GAL] has described as retaliation against Ms. Harlow. I don't think it establishes beyond a reasonable doubt standard, but there is certainly enough evidence that gives me pause to believe that that's what's happening, and I'm not happy about it.

In every instance children that are in happy homes should be looked after. In this case that, I believe that I'm afraid, did not happen, and it saddens me."

After expressing its respect for DCFS, Catholic Charities, Lutheran Charities, and the Family Service Center, the trial court stated DCFS and Catholic Charities lost sight of the real goal in this type of proceeding. According to the court:

"The response from the Department is that—and the State is that we should let the appeal process—internal administrative appeal process take its course, and under some circumstances I would agree, but I do not agree with that today, because this is the same process that should have given Ms. Harlow a fourteen[-]day notice when the children were removed, and that did not happen. This is the same process that should have given Ms. Harlow the

> benefit of the doubt as a foster parent, and that did not happen, and in the meantime while the process has taken its course, these two little girls have been uprooted, placed in an unknown, unfamiliar environment, which I'm sure are with very nice people, but it is not the home that they had gotten to know, and now their permanency in their mind has been uprooted, has been disturbed. Now they don't know what's going to happen to them, and that, I think, is the tragedy, and for that reason I hereby grant custody of these children to Ms. Harlow. The Department is to have guardianship of these children, and that is to occur immediately."

¶ 19 On August 19, 2009, not long after the trial court had expressed its displeasure with DCFS and Catholic Charities' actions in this case, the State filed a motion to return custody of H.H. and A.H. to DCFS. It does not appear the State called this motion for hearing. On the State's motion, on April 15, 2010, the court dismissed the motion to return custody to DCFS and set a hearing date for termination of the biological parents' parental rights.

¶ 20 In September 2009, DCFS filed a motion for a new GAL, seeking to have the current GAL removed. DCFS alleged the GAL was representing the foster mother's interests rather than the best interests of the minors. It does not appear this motion was ever called for a hearing.

¶ 21 In June 2010, the trial court terminated parental rights to H.H. and A.H. DCFS remained as the minors' guardian. Harlow retained custody of the children.

¶ 22 C. Proceedings on Objections to Permanency Report

¶ 23 On March 28, 2011, a hearing was held on objections submitted by Harlow to a permanency hearing report and addendum filed by Catholic Charities. The parties agreed on many of the objections Harlow filed. However, many issues were still in dispute, including, but not limited to, the following: (1) whether Harlow believed she had DCFS's consent to have H.H. evaluated by Dr. Agarwal at Lincoln Prairie Behavioral Health Center based on her conversation with Dr. Agarwal's office; (2) whether Harlow took the children to medical providers without either obtaining prior consent from the children's caseworker or being informed by the medical provider the provider had consent; (3) whether DCFS was aware H.H. was receiving occupational and speech therapy in 2008 and 2009; (4) whether Harlow believed she had consent for the children to see a play therapist and psychiatrist (Harlow claimed she was told by the provider they had consent; lack of consent was only discovered by the medical provider after receiving letters instructing the provider to cease services; Tavia Jones, who worked for Lincoln Prairie Health, wrote a letter apologizing for the error); (5) whether DCFS was aware H.H. had been seeing a dietician, Jen McCabe, since August 2008; (6) whether DCFS was aware A.H. had been seeing Terri Gleason, a feeding therapist, since September 2009; (7) whether DCFS was aware H.H. was referred to Dr. Morton at the Carle Clinic by her pediatrician; (8) whether DCFS was aware A.H. had been seeing Deb Durham since April 2010; (9) whether Harlow had ever refused to take H.H. and A.H. for sibling visits with C.H.; and (13) whether H.H. has autism, regardless of the fact she was approved for social security benefits because she is on the autism spectrum.

¶ 24 Harlow testified she taught special needs preschoolers for the Springfield school district and had a bachelor's degree in early childhood education and special education with a

master's degree in teacher leadership. She lived in Chatham with her daughter J.H., H.H., and A.H. Beginning in September 2010, she took H.H. to see Dr. Agarwal, a psychiatrist at Lincoln Prairie, with the understanding she had the consent of DCFS to do so because Tavia Jones, H.H.'s play therapist, referred H.H. to Dr. Agarwal and said H.H. had consent. H.H. was seeing a play therapist because she did not have any dramatic or imaginary play skills. H.H. had been seeing Jones since July 2010. She believed H.H. had consent to see Jones because she asked Jones whether Jones had a consent in H.H.'s file. She only learned consent had not been given in October 2010 after Lincoln Prairie received letters to cease services.

¶ 25 Harlow testified Tavia Jones later sent her a letter apologizing for telling Harlow H.H. had consent for the treatment. Jones apologized because Harlow had gotten in trouble for taking H.H. to see her and Dr. Agarwal without consent. Harlow stated she understood as of October 2010 she had to personally call the children's caseworker and ask for consent even when another physician makes a referral for medical care. She learned this after Tracy Cashman and Tara Geving came to her house and specifically told her what she needed to do to get consent. She offered the following testimony as to her understanding of obtaining consent for the girls to receive medical care:

> "Well, the pediatrician would always make the referrals. And sometimes, like, if it was a surgery or an appointment that was really quickly, like within the next week, I would call the caseworker because I needed the consent quickly. But otherwise, sometimes the doctor would get the consent and sometimes I would.

> Like, I never knew who was going to get it. But a lot of times the providers just got it. I would go there and they already had consent or they would ask me for the caseworkers name and they would call the caseworker and ask for consent.
>
> Sometimes if they were at the lab, the lab called the 1-800 number to get consent."

Harlow testified she failed to obtain consent for medical treatment for the girls only one time after she received custody because she thought as custodian she could give consent without asking the caseworker. This occurred when she sought treatment for A.H. from Dr. Ettema, an ear, nose, and throat doctor. Harlow's attorney admittedly gave her inaccurate information on her rights to consent to medical treatment as a custodian of the children.

¶ 26 Immediately after the October 2010 meeting with Tracy Cashman and Tara Geving, Harlow called the pediatrician and had her re-refer the girls to all of their providers. She also called Tara Geving and asked for all consents to be put back into place. She testified since the meeting she had not been receiving the consents needed. At the time of the hearing, Harlow stated two requested consents were outstanding. She said Catholic Charities was refusing one consent request. She was not sure why she had not received consent on the other request.

¶ 27 Harlow stated H.H. had seen Dr. Morton, a developmental pediatrician referred by her pediatrician, twice in 2009. DCFS was aware H.H. was seeing this physician. Harlow told Anthony Ramirez, who was H.H.'s caseworker at the time. Ramirez never indicated any objection. After one of H.H.'s appointments with Dr. Morton, Dr. Morton gave Harlow a report, with a copy to Brooke Budny, who was the caseworker at the time. Jen McCabe, H.H.'s dietician

since August 2008, also received a copy of the report. Harlow said DCFS was also aware McCabe was treating H.H.

¶ 28 H.H. aged out of early intervention when she turned three. However, she continued to see McCabe. The consent to see McCabe continued through August 2010. McCabe terminated her services with H.H. in October 2010 after receiving a letter to cease services from DCFS. Harlow testified she did not obtain a new consent after the old consent expired in August 2010 because it was the caseworker's job to renew them.

¶ 29 Harlow testified H.H. saw Terri Gleason, her feeding therapist, beginning in September 2009 through the early intervention program. DCFS was aware and had given consent through the early intervention program. The consent for Gleason to treat H.H. also expired in August 2010. Harlow stated she was not aware whether the consent was renewed.

¶ 30 Harlow testified H.H. had seen Ashley Till, an occupational therapist, for fine motor and sensory issues since March 2010. According to Harlow, DCFS was aware Till was treating H.H. She stated H.H. had received occupational therapy since she was 15 months old. However, on questioning from the trial court, she stated she did not know how DCFS knew Till was treating H.H. She testified the pediatrician referred H.H. to Till.

¶ 31 According to Harlow, during the first two and a half years she had H.H. and A.H., the specialist would make the referral and obtain the consent. Harlow would show up with the child who had the appointment. At that time, she verified the consent was on file and the appointment would take place. Harlow testified she was told either she or the medical provider had to obtain consent for the children to receive medical services.

¶ 32 After the cease and desist letters were issued in October 2010, Harlow stated she

was fully aware she was solely responsible for getting the consents, even if the provider had gone through normal channels and obtained consents. Since then, Harlow testified she had not sought out any provider without getting the proper consent.

¶ 33 However, according to Harlow, when she would call Brooke Budny about getting a specialist, Budny would not reply for months. She testified she complained about the lack of response about certain referrals to Budny's immediate supervisor, Tracy Cashman, but the complaints "went nowhere."

¶ 34 Harlow testified she paid for certain medical services herself after the early intervention program ended. She believed she still had consent to take the children to the providers. According to her testimony, she only thought the children were not covered by the medical card and Catholic Charities and DCFS were denying the payment. When the trial court asked why Harlow thought this, she responded:

> "[Catholic Charities] no longer pay[s] me the foster care stipend. So they said they had no money to pay for any services for her. I said, fine, then I'll pay for it out of pocket. Because we had the discussion. I even wrote for them to ask to use her SSI money to pay for Jen McCabe. They said they were saving her SSI money until she got older. So I just paid Jen McCabe out of pocket because I didn't want her to have to change therapists. I thought continuity of care was better. They knew she was seeing Jen McCabe. They knew I was paying out of pocket.
>
> [TRIAL COURT]: When you say 'they,' Catholic

Charities.

[HARLOW]: Catholic Charities. I even submitted her bill to them to ask for reimbursement out of her SSI fund.

[TRIAL COURT]: And the reason that they discontinued all the services is because they were no longer the custodians of the girls? Why did they discontinue paying for these services?

[HARLOW]: Because they're no longer custodians. So the day you gave me custody was the day they stopped paying for everything.

[TRIAL COURT]: Nice.

[HARLOW]: But they take her SSI checks."

Harlow testified the children were in an early intervention program until reaching the age of three. Consents for services were handled through the early intervention program. Harlow believed the consents would roll over but later learned once the girls aged out of the early intervention program, the consents terminated. However, the need for services still existed, so she paid for services out of pocket with the hope of receiving reimbursement. Harlow was reimbursed for some services rendered during the time when no valid consent was on file.

¶ 35 Tavia Jones, who worked at Lincoln Prairie Behavioral Health Center (Center), testified she was assigned to H.H.'s case after H.H. was referred by Dr. Phelps, her primary care physician. Jones testified she knew H.H. was a ward of the state and DCFS had to consent to treatment. She contacted her clerk and was told the appropriate consents were in the file. She assumed this meant DCFS had consented. She told Harlow, upon her inquiry, all consents were

in the file. Actually, the only consent on file was Harlow's—the Center had never sent the forms to Catholic Charities.

¶ 36 Jones had never seen so much ado on any other case involving DCFS with regard to whether or not proper referrals had come through. According to Jones, it is common for a referral to come through a pediatrician. The standard practice after a pediatrician makes a referral is for the medical provider to obtain the proper consents from either DCFS, insurance, or whoever else needs to provide consent. Jones testified she had never seen an instance where the foster parent had to obtain the consent. The permanency hearing was not completed March 28, 2011.

¶ 37 In May 2011, the State filed a motion to modify order as to legal custody. The motion stated a licensing complaint was made in October 2010, alleging Harlow failed to obtain proper consent for H.H. and A.H.'s medical care. Catholic Charities deemed this complaint substantiated. Dr. Kay Saving, the medical director of the Pediatric Resource Center at the University of Illinois College of Medicine at Peoria, evaluated both girls on January 21, 2011. The motion noted:

> "With regard to both [H.H.] and [A.H.], Dr. Saving reported that there were a large number of inaccuracies and contradictions provided by Ms. Harlow to both of the girls' various medical providers. She further stated that the large number of inconsistencies 'raises serious concern regarding a pattern of erroneous history being given' by [H.H.] and [A.H.'s] foster mother. With regard to [A.H.], she stated that 'some of these

> incorrect or falsified histories appear to have contributed to unnecessary testing and medical care, some of which were potentially harmful or harmful to the child.' With regard to [H.H.] she stated that it was her opinion that the inaccurate medical history given by Jenna Harlow to medical providers 'did result in unnecessary and harmful or potentially harmful medical care'."

¶ 38 On July 11, 2011, the trial court took up the continued contested permanency review and consolidated it with the State's May 9, 2011, motion for change of custody. The parties agreed the petition for custody would proceed at the hearing. Over the course of more than a year, the court held numerous hearings and heard from numerous physicians, nurses, therapists, social workers, caseworkers and managers from DCFS and Catholic Charities, school and daycare personnel and administrators, another foster parent who had custody of H.H. and babysat for A.H., and Dr. Kay Lynn Saving, an expert witness for the State.

¶ 39 As the parties are familiar with the testimony of these witnesses, we will not rehash them all here, but we will discuss a few.

¶ 40 Robin Harris testified she was H.H.'s foster parent the first 13 months of her life. When H.H. was six or seven months old, she began banging her head on the floor. When she was 10 or 11 months old, H.H. began holding her breath and passed out at least twice while doing this. While at an Early Intervention meeting with H.H.'s caseworker, the case manager, and the therapists who had evaluated H.H., the caseworker provided some background information on H.H., including that H.H.'s birth mother would cover H.H.'s face when she cried until she passed out. The caseworker also provided information about possible cocaine use by

the biological mother. When H.H. was placed with Harlow, Harris provided Harlow with this information.

¶ 41 Brooke Budny, a child and welfare specialist with Catholic Charities, testified she was the caseworker for H.H. and A.H. from April through July 2009 and from October 2009 to August 2010. She testified she had discussions with Harlow about medical consents and how to obtain them when C.H. was placed in Harlow's home. Budny testified the consent issue was ongoing. At one point, Harlow made a request to Budny for H.H. see a psychiatrist. Budny referred H.H. to Dr. Medina. After that, Harlow made a request for H.H. to see a psychiatrist at Lincoln Prairie. Budny told her in August 2010 seeing another psychiatrist would not be approved because she was technically under the care of Dr. Medina. Harlow said she wanted H.H. to see another psychiatrist because Dr. Medina did not take her concerns seriously.

¶ 42 We note Dr. Medina also testified in this case about the psychiatric evaluation he performed on H.H. in May 2010 after she was referred by Catholic Charities. The evaluation lasted about 45 minutes. Harlow related to Medina that H.H. had problems with physical aggression, anger outbursts, tantrums, and hallucinations. He stated he did not see anything abnormal in H.H.'s behavior. He testified most of the interview consisted of asking Harlow questions about H.H. After a 45 minute appointment, Dr. Medina listed oppositional defiant disorder as his diagnosis. He testified he was reluctant to prescribe anything for H.H.

¶ 43 Dr. Medina acknowledged he did not know anything about H.H.'s family background. He acknowledged psychosis can be hereditary and it is important to obtain some sort of history on the biological mother and father, but he did not ask for that information from DCFS. According to Medina, Harlow did not have any information about H.H.'s biological

parents. Medina also did not review all of the information brought to the session regarding H.H.'s behavior. After the GAL read a series of reports regarding H.H.'s behavior at daycare reported by people other than Harlow (including incidents of biting, hitting, spitting, knocking the bus monitor's glasses off her face, kicking, and throwing food and silverware), Medina stated a parent of a child displaying this type of behavior has a legitimate reason to be concerned about the child's psychiatric well-being. Medina also stated it would be appropriate for a parent of such a child to take the child to a child psychiatrist for an evaluation and that doing so would be in the child's best interests.

¶ 44 Budny testified she first noticed a problem with Harlow not obtaining consents from Catholic Charities to see medical providers in July 2009, a week or two weeks after DCFS lost custody of the girls. Budny testified she did not say anything to Harlow about this in July 2009. According to Budny, the prior caseworker had not mentioned anything to Budny about Harlow not obtaining consents before taking the children to medical providers. The first time Harlow was made aware of any issue regarding her failure to obtain proper consents for medical care was sometime between October 2009 and the beginning of 2010. Budny testified Harlow was still having issues with failing to obtain consents through August 2010 when Budny stopped working on the case. When asked why she was not obtaining consents, Harlow told Budny she thought she had consents. Budny acknowledged it is the practice of some providers to obtain consents on behalf of the patient during early intervention services.

¶ 45 Budny testified she never had any concerns with the home environment of H.H. and A.H. while living with Harlow. She never saw anything about Harlow's behavior that made her think she should not be parenting small children. The only issue she said she observed

involved Harlow limiting the amount of water H.H. could have. When asked how she normally tells foster parents about how to obtain consent for medical care, Budny stated:

> "Generally, we talk about obtaining medical appointments, and if I'm talking about a pending medical appointment, we talk about obtaining consent.
>
> I tell them I will obtain consent and let them know."

¶ 46 Tara Geving, a caseworker for Catholic Charities, testified she was the caseworker for H.H. and A.H. from August 2010 until April 2011. The case was transferred back to DCFS in April 2011. When she took over the case in August 2010, she learned six providers were providing care to H.H. without proper consent in the file (Dr. Morton, Tavia Jones, Dr. Agarwal, Ashley Till, Terry Gleason, and Jen McCabe). Geving subsequently obtained consent for all of these providers except Terry Gleason and Dr. Morton.

¶ 47 Dr. Kay Lynn Saving, a professor of pediatrics at the University of Illinois College of Medicine at Peoria and a physician in the Pediatrics Resource Center, examined both children. She took a history from Harlow. Harlow said H.H.'s birth mother admitted to using marijuana while pregnant with H.H. She reported a normal delivery and lack of much information about the pregnancy. Harlow said H.H. was generally very healthy without a lot of significant illnesses. Harlow related H.H. had ear tubes placed and had an umbilical granuloma repaired. Harlow also told Dr. Saving the birth mother might have used other drugs in addition to marijuana. According to Harlow, H.H. was taken into foster care because her birth mother had smothered her to unconsciousness in the first few weeks of her life. Harlow told Saving H.H. had received some sensory therapy in the past because she did not like loud noises and bright lights. Harlow

told Saving H.H. had seen Dr. Medina, a psychiatrist, who diagnosed H.H. with oppositional defiant disorder without reading all the behavior reports and all the other information available. Harlow said she was not happy with Dr. Medina's diagnosis and had taken H.H. to see another psychiatrist. Harlow said H.H. was taking Prozac and Risperdal.

¶ 48 Dr. Saving testified H.H. had a fairly large amount of medical visits for a child her age. However, Dr. Saving acknowledged H.H. had 12 or 13 medical visits before H.H. was 13 months old and placed with Harlow. In addition, according to Dr. Saving, Harlow consistently provided inaccurate information to H.H.'s medical providers. While H.H.'s meconium testing showed the presence of morphine and codeine, Harlow told H.H.'s providers H.H. was also exposed to things such as ethanol, cocaine, and marijuana. We note the record shows H.H.'s biological mother admitted using crack cocaine once while she was pregnant with H.H. Dr. Saving also testified Harlow told medical providers H.H.'s birth mother had suffocated H.H. to the point of unconsciousness and that H.H. had seizures. Harlow also reported to medical providers that H.H. had hallucinations, even though the consensus was these were simply attention getting behaviors, not true hallucinations.

¶ 49 Dr. Saving diagnosed H.H. with medical child abuse and physical child abuse. DCFS has not addressed the issue of physical child abuse in this appeal. Dr. Saving based her diagnoses on "the pattern of misinformation and false information given to medical caretakers that resulted in numerous—a large number of medical evaluations with harm or potential harm result[ing] in *** additional testing and *** repetitive evaluations." She also stated "there is concern regarding the diagnosis of physical abuse also because of the tightly wrapped fingers on more than one occasion." As noted previously, DCFS does not make any argument with regard

to physical child abuse.

¶ 50 With regard to A.H., Harlow told Dr. Saving the biological mother spent time at the Triangle Center and opiates were found in the meconium when A.H. was born. Harlow said she did not know much regarding family history but said the birth mother had used marijuana and possibly other drugs during the pregnancy.

¶ 51 Dr. Saving diagnosed A.H. as suffering from medical child abuse. She based this diagnosis on "the large number of medical visits, medical encounters which some have harmful or potentially harmful affects such as additional testing."

¶ 52 Dr. Saving testified both children needed to be protected from further medical child abuse.

¶ 53 On cross-examination, Dr. Saving acknowledged she did not ask Harlow where she obtained the information regarding the birth mother's drug use while she was pregnant with H.H. and A.H. Dr. Saving also did not ask Harlow where she learned the information regarding H.H.'s health during the first year of H.H.'s life prior to her placement with Harlow. Dr. Saving conceded it might be important for her to know where Harlow acquired this information.

¶ 54 When asked if she considered any specific medical visits unnecessary, Dr. Saving identified a total of five specific visits and one or two emergency room visits for both children. According to Dr. Saving:

> "When you're talking about the diagnosis of medical child abuse, you don't look at each individual visit and decide was that necessary or not. You look at the other things I explained before, such as is there misinformation or is there falsification of

> symptoms or is there induction of illness; is there a pattern of behavior of one or more of those things; not each individual visit as being necessary or unnecessary, so I—the individual psychiatric appointment—the question is regarding the misinformation that was given during those appointments."

¶ 55 D. GAL's Closing Argument

¶ 56 During closing arguments, the GAL pointed out the big picture issue before the trial court: "what do we do with two little girls who have been in the care of Jenna Harlow for four and a half years and what harm do we bring to them by either keeping them in the situation or removing them[?]" The GAL questioned why Harlow could not follow the rules of being a foster parent even though he had complained in the past "about the stupidity of some of the rules that drive the licensing process." He did not understand why Harlow did not get all the proper medical consents and renamed the children before parental rights had been terminated. According to the GAL:

> "I think the answer to that to some extent is that we are dealing with very strong personalities on both sides of this issue, at the Catholic Charities level, at the DCFS level[,] and at the Jenna Harlow level. And for whatever reason these relationships have gone so sour that it doesn't appear to me that there's any way for them to be repaired and for these parties to work together for what I believe should be the best interests of the children."

¶ 57 The GAL stated some aspects of the case bothered him as a parent. He wondered

if his parenting would survive the intense scrutiny under which Harlow's parenting had been reviewed. With regard to the children's medical care, the GAL stated:

> "[I]t bothers me when Doctor Saving takes the stand and she says something to the effect *** medical child abuse can be so simple as a parent taking a child to the doctor and then their concerns not being born out by the doctor's assessment. It begs the question as to who's the doctor. Does the parent act out of an abundance of caution or does the parent say, well, you know what, this could be seen as medical child abuse if I over concern myself with these problems."

The GAL noted there had been approximately 150 doctor visits over a period of five years. On cross-examination, Dr. Saving was asked how many of the 150 visits constituted medical abuse. Following a recess of an hour and 45 minutes so Dr. Saving could review her records, Dr. Saving testified possibly 3 out of the 150 visits were not necessary. The GAL also addressed the issue of the consents for medical treatment, which was the hub of the State's case, stating:

> "I still can't in my own mind figure out what's going on with these consents. I think Doctor Agarwal testified that she always got the consents on behalf of DCFS. She believed it was her job to get the consents. Other care providers testified they didn't even know how the consents were obtained, they just knew that they got them somehow. So I don't know that there's a clear process at DCFS as to how these consents are to be obtained. But I do know that once

> [Harlow] was warned that she needed to get them properly, it appears at least that there was a significant improvement in how the consents were obtained."

With regard to the medical history Harlow gave to the children's medical providers, the GAL noted it was unfair to be unduly critical of Harlow for giving medical providers the children's history based on information she had received second and third hand, when DCFS had records and information it did not share with Harlow.

¶ 58 The GAL found it hard to take Dr. Medina's testimony too seriously once he testified he let his board certification expire because it was too much work and not necessary. With regard to Dr. Saving, he could not understand why DCFS did not provide her all the medical records she requested.

¶ 59 In closing, the GAL noted "this is about whether or not Jenna Harlow is a parent who can care for these children and keep them safe." According to the GAL, Harlow seemed to have done a very good job raising her own daughter and he assumed based on all his observations of Harlow and the children she was capable of being a good parent to H.H. and A.H.

¶ 60 E. Trial Court's Ruling

¶ 61 On September 19, 2012, in a thoughtful, detailed oral pronouncement, the trial court denied the State's motion to return custody of A.H. and H.H. to DCFS and ordered custody and guardianship of the two children placed with Harlow. The court discharged DCFS as guardian of both minors.

¶ 62 This appeal followed.

¶ 63 II. ANALYSIS

¶ 64 A. Standard of Review

¶ 65 DCFS argues this court should apply a *de novo* standard of review to the trial court's termination of its guardianship over H.H. and A.H. and a manifest weight of the evidence standard to the court's denial of DCFS's motion to reinstate it as the children's custodian. Harlow argues this court should apply the manifest weight of the evidence standard of review to both issues.

¶ 66 The question whether the trial court erred pursuant to section 2-28(4)(a) of the Juvenile Court Act of 1963 (705 ILCS 405/2-28(4)(a) (2010)) in ruling on an oral motion for a change of guardianship is a question of law to be reviewed *de novo*. *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109, 950 N.E.2d 280, 287 (2011). However, with regard to the court's ultimate dispositional order of custody and guardianship, we will only disturb the dispositional order if it is against the manifest weight of the evidence. Our supreme court has made clear

> "[i]n all cases, it is the health, safety and interests of the minor which remains the guiding principle when issuing an order of disposition regarding the custody and guardianship of a minor ward. The best interests of the child is the paramount consideration to which no other takes precedence." *In re Austin W.*, 214 Ill. 2d 31, 46, 823 N.E.2d 572, 582 (2005).

The court's determination of what is in the children's best interests is reviewed under the manifest weight of the evidence standard of review. *Austin W.*, 214 Ill. 2d at 51-52, 823 N.E.2d at 585.

¶ 67 B. Oral Motion for Change of Guardianship

¶ 68 DCFS first argues the trial court's decision to allow Harlow's oral motion for a change in guardianship violated section 2-28(4)(a) of the Juvenile Court Act of 1963 (Juvenile Act) (705 ILCS 405/2-28(4)(a) (West 2010)). Section 2-28(4)(a) of the Juvenile Act (705 ILCS 405/2-28(4)(a) (West 2010)) states in relevant part, as follows:

> "(4) The minor or any person interested in the minor may apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian of the person or for the restoration of the minor to the custody of his parents or former guardian or custodian.
>
> When return home is not selected as the permanency goal:
>
> (a) The Department, the minor, or the current foster parent or relative caregiver seeking private guardianship may file a motion for private guardianship of the minor. Appointment of a guardian under this Section requires approval of the court." 705 ILCS 405/2-28(4)(a) (West 2010).

¶ 69 On August 13, 2012, the trial court heard closing arguments from the parties on the State's motion to transfer custody of the children back to DCFS. Evidentiary hearings on the issue of whether to transfer custody back to DCFS had been ongoing for over a year. DCFS had counsel at this hearing. During her closing argument, Harlow's attorney stated:

> "[U]nfortunately, at this point, Your Honor, a simple denial of DCFS's motion to have legal custody returned to them is not going to do anything to get these children permanency in this case

> because DCFS has made it clear that they have absolutely no intention of consenting to an adoption of these children. Therefore, what Ms. Harlow is requesting today, Your Honor, is that you deny this petition for leave to have custody returned or, I'm sorry, petition to have custody returned to DCFS and that you grant her guardianship along with custody so that she can petition the Court for a private adoption that does not require the consent of DCFS."

The GAL also stated in his closing argument:

> "This is not going to end today unless this Court makes a drastic decision, we'll be right back here on another motion, more indicated findings and we'll be doing this until these kids are 16 years old. And they deserve something better than that. *** So I'd recommend that the Court deny the petition and that the Court transfer guardianship and custody to *** Ms. Harlow."

Over one month later, the trial court awarded guardianship over H.H. and A.H. to Harlow and denied the Department's motion to have custody returned to it. Neither during the closing arguments, nor in the intervening month prior to the court's pronouncement of its decision, did DCFS ever object to the lack of a written motion for the transfer of guardianship. Nor did DCFS object when the court announced its decision on September 19, 2012.

¶ 70 Harlow concedes she should have filed a written motion. However, she argues her failure to do so was harmless. Relying on *In re J.S.*, 272 Ill. App. 3d 219, 652 N.E.2d 30 (1995), DCFS argues Harlow's failure to file a written motion requires reversal of the court's

guardianship decision.

¶ 71 In *J.S.*, the trial court entered an order in October 1993 adjudicating the minor children neglected and made them wards of the court, with guardianship to DCFS. *J.S.*, 272 Ill. App. 3d at 220, 652 N.E.2d at 31. The children's custody remained with their parents. *J.S.*, 272 Ill. App. 3d at 220, 652 N.E.2d at 31-32.

¶ 72 In April 1994, the trial court entered an order removing custody of the minors from their parents. That day, the parents appeared in court with counsel on an emergency basis and testified they had not been informed they were to be in court on the day the trial court removed custody. *J.S.*, 272 Ill. App. 3d at 221, 652 N.E.2d at 32. "The parents subsequently filed motions to vacate the April 18, 1994, order on the grounds that no petition requesting a change of custody had been filed by the State (705 ILCS 405/2-13 (West Supp. 1993)), nor were they given notice and an opportunity to be heard by the court regarding the issue of a change of custody." *J.S.*, 272 Ill. App. 3d at 221, 652 N.E.2d at 32. The trial court struck the motion to vacate the change of custody on the State's motion. However, the court allowed the parents to present any evidence they could have presented on the motion to remove custody. Following a lengthy hearing, the court ruled the order to remove the children from the parents would stand. The parents' motions for reconsideration were denied. *J.S.*, 272 Ill. App. 3d at 221-22, 652 N.E.2d at 32.

¶ 73 The Second District Appellate Court stated due process requires adequate notice to a minor and his or her parents. According to the court:

> "[T]he record does show that the due process rights of the minors and their parents were *** violated. They received no notice to

> appear before the trial court on April 18, 1994, and no opportunity to be heard before the court ordered custody to be taken from the parents. Thus, we find that their due process rights were violated." *J.S.*, 272 Ill. App. 3d at 223, 652 N.E.2d at 33.

The court found "section 2-28(4) of the Act expressly requires that the parents receive notice and an opportunity to be heard prior to the removal of the minors from their legal custody." *J.S.,* 272 Ill. App. 3d at 223, 652 N.E.2d at 34. The Second District found the trial court erred in granting the State's motion to strike the parents' motion to vacate. According to the Second District, the trial court should have granted the motion to vacate the order removing custody of the children. *J.S.*, 272 Ill. App. 3d at 224, 652 N.E.2d at 34.

¶ 74 The case *sub judice* is distinguishable from *J.S.* in several respects. First, we are not dealing with the rights of biological parents in this appeal. "The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections." *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201, 909 N.E.2d 783, 796 (2009). However, "[t]he due process clauses of the fifth and fourteenth amendments were enacted to protect 'persons,' not States." *People v. Williams*, 87 Ill. 2d 161, 166, 429 N.E.2d 487, 489 (1981). The State is not a "person" and cannot benefit from due-process protection. *Williams*, 87 Ill. 2d at 166, 429 N.E.2d at 489.

¶ 75 Second, unlike the parents in *J.S.*, the State and DCFS did not bring the error at issue to the attention of the trial court. Neither the State nor DCFS objected at the hearing to Harlow's oral motion to grant her guardianship over the children. Further, the record shows neither the State nor DCFS filed nor stated an objection to Harlow's oral motion prior to the

court's ruling on September 19, 2012, over one month after the motion was made by Harlow's attorney. Moreover, the record shows neither the State nor DCFS filed any kind of motion for the trial court to reconsider its guardianship decision prior to this appeal being filed. By failing to object at the hearing and at the court's pronouncement of its decision, and by failing to file a motion to reconsider, DCFS forfeited its procedural objections to the lack of a written motion.

¶ 76 Finally, in this case, the trial court had been holding evidentiary hearings for over a year to determine what was in the children's best interest as far as custody. DCFS took part in these hearings. Unlike *J.S.*, the trial court's decision to remove guardianship was not made without any input from the State or DCFS. The error in this case was harmless and does not require reversal.

¶ 77 C. Custody and Guardianship Determinations

¶ 78 DCFS argues the trial court erred in granting Harlow guardianship over the children because she intentionally and repeatedly undermined DCFS's role as guardian. DCFS argues Harlow's behavior shows she lacks "the judgment and responsibility to exercise powers as guardian," which includes the power to make life and death decisions about individuals in their charge.

¶ 79 DCFS points to Harlow allegedly ignoring rules requiring her to get consent from DCFS for the children to receive non-ordinary care. DCFS takes issue with the trial court finding these were "technical violations" of DCFS regulations. DCFS argues this is wrong as a matter of law because both the Juvenile Act and its rules make clear that a custodian like Harlow does not have legal authority to repeatedly take a foster child for evaluations and medications outside of routine care. DCFS also points to Harlow allegedly "shopping" for specialists who were

unaware DCFS was the children's guardian to get the diagnoses and medications she wanted the children to have.

¶ 80 As far as the trial court's decision to deny the State's motion to return custody to DCFS, the Department argues the court's decision was against the manifest weight of the evidence because the evidence supported Dr. Saving's expert testimony both H.H. and A.H. were suffering from medical child abuse. According to DCFS's brief:

> "Relieving Harlow as custodian and returning H.H. and A.H. to the care of the Department is the result demonstrated by voluminous information analyzed and discussed by the only expert witness to the proceedings, Dr. Saving, with much other evidence consistent with her opinions. Dr. Saving's reports and testimony showed manifestations of medical child abuse, a dangerous disorder that jeopardizes the medical and psychological health of a child left in the care of an individual who either falsifies the child's medical history or induces symptoms of illness. The court, however, refused to accept that medical child abuse is an actual medical diagnosis, even though the Appellate Court has recognized its legitimacy and the danger it presents to vulnerable children."

According to the Department, the court erred by focusing on whether the "erroneous treatment" identified by Dr. Saving caused the minors any danger.

¶ 81 DCFS focuses in on only certain aspects of the trial court's decision to remove guardianship from the Department and retain custody in and give guardianship to Harlow.

However, it is important to review the court's ruling in its entirety and remember the focus of the trial court's analysis in ruling on custody and guardianship issues. As our supreme court has stated, in guardianship and custody cases, the issue that must be determined is what is in the best interest of the child. *Austin W.*, 214 Ill. 2d at 49, 823 N.E.2d at 583. " 'A child's best interest is not part of an equation. It is not to be balanced against any other interest. In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors ***.' " *Austin W.*, 214 Ill. 2d at 49, 823 N.E.2d at 583 (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879, 571 N.E.2d 905, 923 (1991)).

¶ 82 The trial court noted it originally gave Harlow custody of the girls in 2009 after the emergency hearing to keep the Department and Catholic Charities from removing the children from their long-term placement with Harlow. The court stated it was not satisfied with the explanation given as to why the agencies were trying to remove H.H. and A.H. The court stated its decision to give Harlow custody caused the Department to place Harlow under close scrutiny. According to the court:

> "One thing is certain in this case, and that is that [H.H. and A.H.] had a rough start in life, and as a result, developed a number of illnesses and conditions, both physical and behavioral, or both medical and behavioral, and they demand—which require that the girls see a large number of professionals from speech therapists to occupational therapists to pediatricians to doctors of all kind.
>
> These conditions and needs also make it very challenging to parent, and the evidence shows that Miss Harlow has struggled and

made mistakes in parenting the girls. In some instances, frankly, her parenting decision[s have] raised eyebrows. *** Also, it's a bit distressing to the Court, but the evidence also shows that she's a devoted—she's devoted to the girls and the Court believes wants nothing but the best for the girls.

For all practical purposes, Miss Harlow's home is the only home that these girls have known. Except for a few periods of time early on in [H.H.'s] life when she was placed with another foster parent at the beginning, and then for a small period of time when she was—they were removed from the home while this litigation was going on, the girls have lived in Miss Harlow's home practically their entire life. Further, Miss Harlow is the only mother that these girls have known. From all accounts, they love each other."

Based on the evidence presented, the court found H.H. and A.H. were not in danger while in Harlow's care and it would not be in the girls' best interests to be removed from Harlow's care. According to the court:

"In light of the history of this case, it is not reasonable to believe that the Department would leave the children in Miss Harlow's care if it regains custody of the children. This will no doubt prolong the permanency for these girls, and clearly, it is not in their best interest."

¶ 83 With regard to the allegations of medical abuse, the court noted the State's allegations rested on the testimony of Dr. Saving who opined Harlow had subjected the girls to medical abuse. DCFS attempts to make an issue with regard to the court's statement he found Dr. Saving credible, but not persuasive. We do not take issue with the court's statement. It appears the court was simply stating it thought Dr. Saving said what she believed. However, based on all the evidence the court had heard, it simply did not agree with Dr. Saving's diagnosis. We note a diagnosis of medical abuse is not a purely objective diagnosis.

¶ 84 The court noted no medical or behavioral service provider who testified thought the care he or she provided was "unnecessary, contraindicated, or excessive." Many of these providers worked with the girls as a result of referrals from schools, doctors, and other professionals. The court also noted Dr. Saving was only able to identify a few of the girls' appointments that she considered unnecessary. According to the court:

> "This gives me pause, because if they were unnecessary—if the great majority of these treatments were necessary, the Court finds it hard to understand [Dr. Saving's] opinion that these children were subjected to medical abuse for taking them to doctors and professionals when it was necessary to do so."

The court stated "[n]o one questions that these girls suffer from serious and above-average medical and behavioral issues; therefore, it is reasonably expected that they would require more medical and professional intervention than a normal child."

¶ 85 With regard to Dr. Saving's assessment Harlow was not providing accurate medical histories to the girls' providers, which was important to Dr. Saving's finding the girls

suffered from medical abuse, the trial court noted Dr. Saving did not have all relevant information but only the information provided to her by DCFS. The court stated Dr. Saving did not contact any of the girls' providers to determine whether any of the allegedly inaccurate medical information provided by Harlow led to any erroneous treatment or placed the girls in any danger. The court further noted Harlow had to rely on limited information provided to her by a caseworker with regard to the children's medical history. According to the court, "the information provided by the caseworker, the Court believes, would lead a reasonable person to reach the conclusion reached by Miss Harlow as to the medical and developmental history of the girls."

¶ 86 The trial court further noted:

> "[A]ll treatments and medications at one point or another were approved by DCFS. Much was made of the prescription for psychotropic medication. Much was made that a young child like that should not receive psychotropic medications. Dr. Agarwal, in her deposition, did not find it unusual and continued her on those medications.
>
> Much was made of the fact that there were no consents from the Department, but when the Department then was given the opportunity to approve or disapprove, the Department approved of the—of the medication, so it leads me to believe that the—that everyone that considered the treatment of this child with psychotropic medication believed that it was indicated and

appropriate and not unnecessary."

In other words, the court believed the treatment the children were receiving without consent was necessary, and for the most part, so did DCFS.

¶ 87 With regard to DCFS's argument the trial court erred as a matter of law in finding Harlow's failure to obtain consent for certain medical treatment was just a technical violation, we disagree. The court was not stating the consent requirement was insignificant. The court merely was stating the children's care or well-being in this case was not negatively impacted by Harlow's failure to obtain consent for certain providers. As we highlighted in some testimony of the providers above, it was unusual to require the foster parent to obtain consents from DCFS for treatment. A provider or the caseworker would often obtain the consents. It is understandable Harlow was confused on how to do so.

¶ 88 The trial court focused on this case as a whole, not on specific incidents, to determine how to serve the best interests of these children. The court noted it had considered all the factors set forth in the Illinois Marriage and Dissolution of Marriage Act and the Juvenile Court Act. The court stated:

> "There are many things about this case that are troubling. This case raises in my mind questions that remain unanswered, but it is not my intent here today to comment or dwell into the issues of motivation behind this litigation, but I have to consider what the future relationship between Miss Harlow and the Department will be in light of my ruling here today, and even more importantly, what will an acrimonious relationship do to bring this matter to

> permanency and the adoption of the girls? It will be a great disservice to the girls if their permanency is embroiled in disputes and in litigation."

The court noted the GAL had stated the girls were happy living with Harlow, were bonded with Harlow and Harlow's other daughter, and Harlow and the girls appeared to love each other. Harlow wanted to adopt the girls. As a result, the court concluded guardianship of H.H. and A.H. should be immediately placed with Harlow.

¶ 89 The experienced trial judge heard days of testimony and his conclusions concerning the persuasiveness of the testimony are entitled to deference. We find the trial court's determination the girls' best interests would be served by denying the State's motion for custody and giving Harlow guardianship of the girls was not against the manifest weight of the evidence.

¶ 90 III. CONCLUSION

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

¶ 92 Affirmed.