2014 IL App (4th) 130916-U

NO. 4-13-0916

FILED
March 12, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: P.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Ford County
v.	)	No. 11JA1
MICHAEL WIDMER,	)	
Respondent-Appellant.	)	
	)	Honorable
	)	Stephen R. Pacey,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the termination of the respondent's parental rights, concluding that because the trial court's finding of depravity was not based on the dysfunctional neglect proceedings that occurred, reversal was not appropriate.

¶ 2 On March 14, 2011, the State filed a petition for adjudication of wardship under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 to 1-18 (West 2010)), alleging that P.W. (born March 11, 2011) was a neglected minor because he was residing in an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2010)). Following a May 2011 adjudicatory hearing, the trial court found that P.W. was a neglected minor as alleged by the State. Following a June 2011 dispositional hearing, the court (1) adjudicated P.W. a ward of the court; (2) appointed the Department of Children and Family Services (DCFS) as P.W.'s guardian; and (3) ordered respondent, Michael Widmer, to undergo deoxyribonucleic acid (DNA) testing to determine his relationship, if any, to P.W.

¶ 3 In September 2011—after DNA test results revealed he was P.W.'s biological father—respondent *pro se* filed a motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(2) (West 2010)), which the trial court denied.

¶ 4 In June 2013, the State filed a petition to terminate respondent's parental rights as to P.W. pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). Following an August 2013 fitness hearing, the trial court found respondent unfit. In September 2013, the court conducted a best-interest hearing and, thereafter, terminated respondent's parental rights.

¶ 5 Respondent appeals, arguing that because the trial court erred by denying his *pro se* motion for substitution of judge as of right, the termination of his parental rights must be reversed. We affirm.

¶ 6 I. BACKGROUND

¶ 7 (We note that trial judge Stephen R. Pacey presided over the entirety of the proceedings in this case, including respondent's September 2011 motion for substitution of judge as of right and the subsequent termination hearings that occurred in August and September 2013.)

¶ 8 A. The State's Petition

¶ 9 On March 14, 2011, the State filed a petition for adjudication of wardship in case No. 11-JA-1, alleging that P.W. was a neglected minor because he was residing in an environment injurious to his welfare. The State's petition identified Meredith Mahon as P.W.'s mother and listed P.W.'s father as "unknown." The petition alleged that because Mahon (1) abused alcohol, (2) was in an abusive relationship with respondent, and (3) had concurrent juvenile court cases (Ford County case Nos. 09-JA-14 and 09-JA-15) in which the trial court appointed DCFS as the guardian of her two other children, Mahon's circumstances created a risk of harm to P.W.

The next day, the court granted the State's motion for the appointment of a special prosecutor in case No. 11-JA-1 and conducted a shelter-care hearing at which special prosecutor Ed Parkinson appeared for the State. (The special prosecutor assumed control of all three cases.)

¶ 10 B. The Evidence Presented at the Shelter-Care Hearing and the Trial Court's Determination

¶ 11 The trial court first informed Mahon, who was represented by counsel, that she was a respondent party to the State's petition. The court then admonished Mahon concerning her rights and provided a brief synopsis of the purpose and scope of the current hearing as well as subsequent proceedings. (Respondent was not present at the shelter-care hearing.) The parties then presented the following evidence.

¶ 12 On March 11, 2011, DCFS received a hotline report that Mahon had given birth to P.W. at Carle Hospital in Urbana, Illinois. DCFS investigator Linda Wild performed a preliminary investigation that revealed Mahon's two other children were in DCFS' custody for more than a year because of substance-abuse concerns and domestic-violence issues involving Mahon and respondent.

¶ 13 The next day, Wild met with Mahon at the hospital, and immediately thereafter, DCFS assumed temporary custody of P.W. Wild's shelter-care report noted that Mahon introduced a man as P.W.'s father to the hospital's staff. The staff later identified that man as respondent. Wild's report also noted that when a hospital nurse cautioned respondent about carrying P.W. in his arms throughout the hospital's hallways, respondent informed the nurse that, "I am not going to drop my baby on the floor." On March 13, 2011, Mahon (1) attempted to change P.W.'s surname on his birth certificate and (2) told Wild that she did not know the identity of P.W.'s biological father. (P.W.'s birth certificate did not list a father.)

¶ 14 Mahon testified that shortly after P.W.'s birth, respondent arrived at the hospital,

adding that it was "probable and most likely" that respondent was P.W.'s father. Mahon told Wild she did not know the identity of P.W.'s father because she was not sure she wanted respondent to have parental rights. Mahon admitted that she had petitioned a trial court in a different case to issue an order of protection against respondent. (The court noted that a two-year order of protection was issued on February 10, 2010, and was still in effect at that time.)

¶ 15 The trial court later found that an immediate and urgent necessity required P.W.'s placement in shelter care based on DCFS' shelter-care report and the court's previous determinations in case Nos. 09-JA-14 and 09-JA-15. The court then appointed DCFS as P.W.'s temporary guardian. In so finding, the court noted the following:

> "I presume, *** Parkinson will decide what *** to do in terms of joining some putative father. The testimony today makes it pretty clear who the putative father is."

¶ 16 C. The Evidence Presented at the Adjudicatory Hearing and the Trial Court's Determination

¶ 17 On May 9, 2011, the trial court conducted (1) permanency hearings in case Nos. 09-JA-14 and 09-JA-15 and (2) an adjudicatory hearing on the State's March 2011 petition for adjudication of wardship in case No. 11-JA-1, the instant case. Initially, the court acknowledged, in pertinent part, (1) special prosecutor Lorinda Lamken and (2) respondent in his *pro se* capacity with respect to case No. 09-JA-15. (Respondent was identified as the biological father in case No. 09-JA-15; respondent was not the biological father in case No. 09-JA-14.) Thereafter, the following exchange occurred:

> "[LAMKEN]: Judge, *** I have been informed that [respondent] is requesting a continuance. *** [Respondent] is representing himself, and he is the father of the two younger children.

THE COURT: *** [O]riginally *** the father of [P.W.] was alleged to be unknown, but the testimony at the shelter-care hearing from *** Mahon *** indicated that [respondent] is, in fact, the father. I presume there has been paternity to establish that yet. No, no?

[LAMKEN]: I am not sure yet. [DCFS] is indicating no.

[DCFS]: Not yet, judge.

THE COURT: *** [The court] will show [respondent] as the putative father, since *** Mahon has testified under oath that he is."

(Despite the court's presumption at the end of the March 2011 shelter-care hearing, the State did not amend its petition for adjudication of neglect to name respondent as P.W.'s putative father.)

¶ 18 Immediately after granting respondent's *pro se* motion for a continuance, the trial court admonished respondent, as follows:

"Now, with respect to [No.] 11-JA-1, [respondent], you don't have to make any important decisions. [The court is] going to admonish you that you are a party respondent to that case also. You have the right to be heard and present evidence relevant to the proceedings, cross-examine witnesses, and to examine pertinent court records and files in the event of adjudication o[f] Wardship or entry of any other final order. You have the right to appeal the court's decision and file your written notice of appeal with the clerk of the court within 30 days of the date of any such order.

* * *

[If the] allegations are proved at the time of that adjudicatory hearing ***, [P.W. will] be made a ward of the court, and we would proceed to a second dispositional hearing, at which time [the court will] hear information regarding the best outcome for [P.W.], and he could be continuing in foster care or placed in [some] other public facility. So it is important you be present at all future hearings.

*** [DCFS], until there is some sort of adjudication though, we will not get the paternity test paid for by DCFS; correct?

[DCFS]: Not until closed dispositional, your honor.

THE COURT: *** [S]o, [respondent] is an interested person. I have admonished him, but he is still technically not a party to this case. You agree, *** Lamken?

[LAMKEN]: I do, Your Honor.

THE COURT: [Mahon's Attorney]?

[MAHON'S ATTORNEY]: Yes, your honor.

THE COURT: *** [Guardian *ad litem* (GAL)], you agree?

[GAL]: Absolutely, yes."

¶ 19 At the May 24, 2011, continuation of the consolidated proceedings, the trial court recognized respondent in his *pro se* capacity as the father in case No. 09-JA-15 and the putative father of P.W. in case No. 11-JA-1. (The record shows that the court conducted (1) permanency

hearings in case Nos. 09-JA-14 and 09-JA-15 and (2) an adjudicatory hearing in case No. 11-JA-1; we discuss only the pertinent evidence presented in case No. 11-JA-1.)

¶ 20 1. *The State's Evidence*

¶ 21 Wild testified consistently with her testimony at the March 2011 shelter-care hearing regarding her hot line investigation. Wild suspected respondent was P.W.'s father after a conversation at Carle Hospital in which respondent told Wild he had a right to be present when his son was born. Wild added that she first learned that respondent was P.W.'s father through testimony Mahon provided at the shelter-care hearing. Wild added that at the time she completed her initial investigation, she considered respondent P.W.'s putative father.

¶ 22 2. *Respondent's Evidence*

¶ 23 Following the presentation of evidence by the State, the following discussion occurred:

> "THE COURT: *** [Respondent], what testimony do you want to present?
>
> [RESPONDENT]: After [P.W.] was born that I was approved for visits, and I visited him since that time and never placed him in any danger.
>
> THE COURT: *** I don't think anybody is disagreeing [with] you. *** Lamken, is [respondent] now provided visits with [P.W.] even though paternity has not been established?
>
> [LAMKEN]: I believe that that they have been based on both parties' claim that [respondent] is the father. I believe at one point, he was getting supervised visits.

THE COURT: Okay."

¶ 24 3. *Mahon's Evidence*

¶ 25 Mahon testified that she did not want DCFS to know that respondent was P.W.'s father because the domestic-violence issues between them had, in part, caused DCFS to assume guardianship of her other two children in case Nos. 09-JA-14 and 09-JA-15. Specifically, Mahon feared DCFS would also remove P.W. from her care if she disclosed her contact with respondent. Mahon admitted that she had violated the trial court's February 2010 order of protection by permitting contact with respondent, which led to P.W.'s birth.

¶ 26 4. *The Trial Court's Admonishment and Adjudicatory-Hearing Determination*

¶ 27 Prior to hearing arguments, the trial court noted, as follows:

> "Just so the record is clear, [respondent] is participating in [case No. 11-JA-1]. But technically, *** since [respondent] is not yet a party, [the court does] not think he has a right to present evidence or testify."

Thereafter, the court entered an order adjudicating P.W. a neglected minor based on the previously existing cases in Nos. 09-JA-14 and 09-JA-15 and the failure or inability to correct the conditions that brought those children into DCFS' care. The court maintained DCFS as P.W.'s guardian and ordered both Mahon and respondent to comply with their respective DCFS client-service plans and the court's orders.

¶ 28 D. The Evidence Presented at the Dispositional Hearing and the Trial Court's Determination

¶ 29 On June 27, 2011, the trial court conducted (1) permanency hearings in case Nos. 09-JA-14 and 09-JA-15 and (2) a dispositional hearing on the State's March 2011 petition for adjudication of wardship in case No. 11-JA-1. Initially, the court recognized respondent in his

pro se capacity as the father in case No. 09-JA-15 and the putative father of P.W. in case No. 11-JA-1. (We note that at this point the State had still not amended its March 2011 petition for adjudication of wardship to name respondent as P.W.'s putative father.) During the hearing, respondent objected, calling into question the court's subject-matter jurisdiction. The following discussion took place:

> "THE COURT: Well, [respondent,] you can file whatever motion you want to. We will deal with that. *** Any questions you want to ask of this witness?
>
> [RESPONDENT]: No.
>
> THE COURT: [The court] note[s], [respondent], you are not a party yet to [No.] 11-JA-1 ***. You are the putative father, but you have not been determined. So, in addition to whether or not there would be any merit to your claim, you are not yet a party, but we will deal with that if and when you file something."

¶ 30 Following the presentation of evidence and argument, the trial court adjudicated P.W. a ward of the court and maintained DCFS' guardianship of P.W. The court then ordered respondent to undergo DNA testing to determine his relationship, if any, to P.W. (From March 14, 2011, when the State filed its petition for adjudication of wardship in this case, to June 27, 2011, when the court entered a final written dispositional order, the State failed to amend its petition to name respondent as P.W.'s putative father.)

¶ 31 E. Respondent's Motion for Substitution of Judge as of Right

¶ 32 On September 12, 2011, respondent *pro se* filed a motion for substitution of judge as of right, which stated, "I, [respondent], now [a party] to the case as DNA results state[,] re-

quest a substitution of judge and *** appointment of counsel." At a September 20, 2011, hearing, the trial court—for the first time—recognized respondent in his *pro se* capacity as the father in case No. 11-JA-1. Thereafter, the following exchange occurred:

> "THE COURT: *** Any further argument you want to make on your motion for substitution of judge ***?
>
> [RESPONDENT]: *** Your Honor, *** at the first hearing, I was told I wasn't a party. As soon as [DNA testing confirmed] I was the father, I went to the clerk's office and filed a motion within the [10]-day period for substitution, and that I believe that motion is timely[.] *** I did it as quickly as I could, and I think that I am entitled to substitution [of judge] by law."

¶ 33 The trial court then asked the parties for their respective positions regarding respondent's motion, which prompted the following response from Mahon's counsel:

> "I think this motion may present a different situation. For the reasons that [respondent] indicated, he wasn't a party to the case until he was named the father. The rulings by the court were prior to [respondent] being joined as a party. In this particular case, I think[] the motion for substitution may have some merit as a matter of right."

¶ 34 The trial court disagreed, ruling, as follows:

> "While [respondent] has technically not been a party[, h]e has been permitted to be in and participate in the proceedings. He has even been heard in the proceedings. ***

> [Respondent] has clearly entered an appearance as a putative father. He could have at any previous junction filed [the] appropriate motion to obtain paternity testing. He asserted from the beginning that he was the father, and there have been more than a few substantive rulings."

Thereafter, the court denied respondent's motion for substitution of judge.

¶ 35 On June 24, 2013, the State filed a petition to terminate respondent's parental rights as to P.W. pursuant to the Adoption Act. Specifically, the State alleged that respondent was an unfit parent because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility for P.W.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) is depraved in that he has three felony convictions (750 ILCS50/1(D)(i) (West 2012)); (3) failed to make reasonable efforts to correct the conditions that were the basis for P.W.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (4) failed to make reasonable progress toward the return of P.W. within nine months after the adjudication of neglect (May 24, 2011, through February 24, 2012) (750 ILCS 50/1(D)(m)(ii) (West 2012)); (5) failed to make reasonable progress toward the return of P.W. during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2012)); and (6) is currently incarcerated as a result of a criminal conviction and, prior to his incarceration, respondent had little or no contact with P.W., provided little or no support to P.W., and respondent's incarceration will prevent him from discharging his parental responsibilities for at least two more years (750 ILCS 50/1(D)(r) (West 2012)). The trial court appointed counsel to represent respondent on the same day the State filed its petition to terminate respondent's parental rights.

¶ 36 On August 1, 2013, respondent's counsel filed a motion under section 2-615 of the

Code (735 ILCS 5/2-615 (West 2012)), requesting dismissal of the State's motion to terminate his parental rights. Respondent argued only that the common-law record did not show that the trial court had ruled on respondent's *pro se* motion for substitution of judge as of right. At an August 6, 2013, hearing, the court denied respondent's motion to dismiss, noting the September 20, 2011, hearing, at which the court considered and denied respondent's motion for substitution of judge as of right.

¶ 37 Immediately thereafter, the trial court conducted a fitness hearing on the State's motion to terminate respondent's parental rights. Following the presentation of evidence and argument, the court found that the State had proved the first five allegations in its petition for termination of respondent's parental rights by clear and convincing evidence. (The court did not enter a ruling on the State's allegation that respondent was unfit because he was incarcerated as a result of a criminal conviction and, prior to his incarceration, respondent had little or no contact with P.W., provided little or no support to P.W., and respondent's incarceration would have prevented him from discharging his parental responsibilities for at least two more years.)

¶ 38 In September 2013, the trial court conducted a best-interest hearing. At the start of that hearing, the court granted respondent's motion to discharge his court-appointed counsel. Following the presentation of evidence and argument, the court terminated respondent's parental rights as to P.W. (The court awarded custody of P.W. to Mahon.)

¶ 39 This appeal followed.

¶ 40 II. RESPONDENT'S MOTION FOR SUBSTITUTION OF JUDGE AS OF RIGHT

¶ 41 A. The Applicable Statute and Our Standard of Review

¶ 42 Section 2-1001(a)(2) of the Code, provides, in pertinent part, that in any civil proceeding, a substitution of judge may be had in the following situation:

"Substitution as of right. When a *party* timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

> (i) Each party shall be entitled to one substitution of judge without cause as a matter of right.
>
> (ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.
>
> (iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party." (Emphasis added.) 735 ILCS 5/2-1001(a)(2) (West 2010).

¶ 43 "The right to substitution of judge is absolute when properly made, and the circuit court has no discretion to deny the motion." *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23, 975 N.E.2d 203. "Section 2-1001(a)(2) of the Code is 'to be liberally construed, and where the conditions are met, the trial court has no discretion to deny the request un-

less it is shown that the motion was made simply to delay or avoid trial.' " *Illinois Licensed Beverage Ass'n, Inc. v. Advanta Leasing Services,* 333 Ill. App. 3d 927, 932, 776 N.E.2d 255, 259-60 (2002) (quoting *Sahoury v. Moses,* 308 Ill. App. 3d 413, 414, 719 N.E.2d 1157, 1158 (1999)). Because the trial court has no discretion to deny a proper motion for substitution of judge as of right, our review is *de novo. Id.* at 932, 776 N.E.2d at 260.

¶ 44 B. Respondent's Substitution-of-Judge Claim

¶ 45 Respondent argues that because the trial court erred by denying his *pro se* motion for substitution of judge as of right, the termination of his parental rights must be reversed. The State responds that because the trial court had already made rulings on substantial issues—that is, the adjudicatory and dispositional hearings—respondent's motion for substitution of judge as of right was properly denied by the trial court. Alternatively, the State, citing this court's decision in *In re Austin D.*, 358 Ill. App. 3d 277, 281, 831 N.E.2d 1215, 1218 (2005), claims that "[a] motion for substitution may also be denied, in the absence of substantive ruling, if the movant had the opportunity to form an opinion as to the judge's reaction to her claims."

¶ 46 In *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 50, 996 N.E.2d 1131, this court explicitly rejected the "test the waters" doctrine the State raises alternatively as no longer valid law, pointing out that the " 'test the waters' doctrine was rendered obsolete 20 years ago by the introduction of the right to a substitution of judge without cause under the new version of section 2-1001(a)(2)" of the Code. We also noted that our mention of the test the waters doctrine in *Austin D.* was merely erroneous *dicta*. Id. ¶ 49. We adhere to our conclusion in *Schnepf*.

¶ 47 C. The Trial Court's Denial of Respondent's Motion for Substitution of Judge as of Right

¶ 48 Prior to addressing respondent's argument, we first discuss the procedural history of this case and the timing of respondent's *pro se* motion for substitution of judge as of right,

which we find dispositive. The neglect proceedings in this case began on March 14, 2011, when the State filed its petition for adjudication of wardship under the Juvenile Court Act and continued until June 27, 2011, when the trial court entered a final written dispositional order. See *In re Faith B.*, 359 Ill. App. 3d 571, 575, 834 N.E.2d 630, 634 (2005) ("Dispositional orders are deemed to be final and appealable *** even though they may be interlocutory in nature").

¶ 49 At the May 9, 2011, adjudicatory hearing, the trial court noted that the State did not initially name respondent as a party to the neglect proceedings in this case. The court did not, however, discuss further the presumption it made at the end of the March 2011 shelter-care hearing that the State would amend its wardship petition, identifying respondent as P.W.'s putative father. Instead, the court admonished respondent that he was a party to the neglect proceedings. Inexplicably, shortly after that admonishment, the court readmonished respondent that he was "technically not a party" but, instead, "an interested person." The court then received concurrences with this view from the State, GAL, and Mahon's attorney, agreeing that respondent was not a party to the proceedings but, instead, an interested person (whatever that is supposed to mean).

¶ 50 At the May 24, 2011, continuation of the adjudicatory hearing, the trial court recognized respondent as P.W.'s putative father. The court later admonished respondent that although he was "participating" at the adjudicatory hearing, he was not a party and thus, had no standing to present evidence or testify. Despite that admonishment, the record shows that respondent presented evidence and cross-examined witnesses called by the State and Mahon.

¶ 51 At the June 27, 2011, dispositional hearing, the trial court again admonished respondent that he was not a party to the proceedings. Despite that admonishment, the court permitted respondent to (1) call witnesses, (2) present evidence, (3) cross-examine witnesses called

by the State and Mahon, and (4) present a closing argument. The court then entered its final dispositional order. Throughout the aforementioned neglect proceedings, the State failed to amend its initial petition for adjudication of wardship. In other words, the State failed to name respondent as P.W.'s putative father before respondent filed his September 2011 motion for substitution of judge as of right.

¶ 52 The trial court based its denial of respondent's motion to substitute judge as of right on section 2-1001(a)(2)(iii) of the Code. 735 ILCS 5/2-1001(a)(2)(iii) (West 2010). Specifically, the court found that although respondent was "technically" not a party to the proceedings, he was—as the court characterized during the May 2011 hearing—an "interested person." We find the court's assessment of respondent's legal status erroneous for the following reasons.

¶ 53 First, the Juvenile Court Act, which governs the neglect proceedings in this case, does not recognize the concept of "interested person." Indeed, Illinois jurisprudence does not ascribe any legal significance to that concept in the manner the trial court suggested. Second, although the court claimed that respondent entered his appearance and participated in the proceedings so as to bar his motion for substitution of judge as of right, respondent's presence during these earlier proceedings did not give him some sort of quasi-party status. Simply put, no such legal status exists. Respondent was either a party to the proceedings or he was not a party to the proceedings. Similarly, we conclude that the court's statement that respondent could have filed motions in the neglect proceeding was erroneous because, prior to becoming a party, respondent had no standing to do so.

¶ 54 We note that section 1-5 of the Juvenile Court Act addresses the role of parents. See 705 ILCS 405/1-5 (West 2010) ("[T]he minor who is the subject of the proceedings and his parents *** who are parties respondents have the right to be present, to be heard, to present evi-

dence ***, to cross-examine witnesses, to examine pertinent court files and records and *** be represented by counsel.") But for that section to apply, a parent must be named as such in the petition. That simple—and glaringly obvious step—never occurred in this case.

¶ 55 We place no more significance on respondent's presence at the juvenile court proceedings that took place than we would if a stranger walked into the courtroom and asked to present evidence and argument. In other words, respondent's presence at the earlier juvenile court hearings had no legal significance because he was not a party to the case. The State could have—and should have—avoided this situation by (1) initially naming respondent as the father or (2) later amending its petition for adjudication of wardship by naming respondent as the father. However, the State failed to do so.

¶ 56 As we have previously mentioned, section 2-1001(a)(2) of the Code provides, in pertinent part, that in any civil proceeding, a substitution of judge as of right may be had "[w]hen a *party* timely exercises his or her right." (Emphasis added.) 735 ILCS 5/2-1001(a)(2) (West 2010)). On September 12, 2011, approximately 2 1/2 months after the trial court entered its dispositional order and approximately 1 year and 9 1/2 months before the State filed its motion to terminate respondent's parental rights, respondent filed his motion for substitution of judge as of right. At that time, the State had yet to name respondent as a party to this case. Wardship proceedings governed by the Juvenile Court Act and termination proceedings governed by the Adoption Act provide for the adjudication of distinct issues and are statutorily structured to occur separately. Nonetheless, a petition to terminate parental rights is essentially a continuation of the earlier neglect proceedings within the same case. See *In re Abner P.*, 347 Ill. App. 3d 903, 908, 807 N.E.2d 1145, 1149 (2004) ("[T]he filing of a petition to terminate parental rights does not initiate an entirely new proceeding within an existing case number" so as to require the reis-

suance of a summons for a respondent who was already a party to the proceedings.); *In re D.F.*, 201 Ill. 2d 476, 507, 777 N.E.2d 930, 947 (2002) (declining to address the merits and vacating this court's analysis in that case that a petition to terminate a respondent's parental rights initiates an entirely new proceeding that requires the party respondent to timely file a motion to substitute judge as of right); *In re Precious W.*, 333 Ill. App. 3d 893, 901, 776 N.E.2d 794, 800 (2002) ("[W]e hold that when the two acts are construed together, a fitness hearing under the Adoption Act is a continuation of the abuse, neglect, or dependency proceedings of the Juvenile Court Act."). Thus, had respondent actually been a party when he filed his motion for substitution of judge as of right, his argument on appeal might have merit

¶ 57 In this case, we conclude respondent was not a party at the time he filed his September 2011 motion for substitution of judge as of right, and, as a consequence, he had no standing to file such a motion. As a result, the trial court's order denying respondent's motion was devoid of any legal effect.

¶ 58 We note that in the termination proceedings that occurred, the trial court found respondent unfit, in pertinent part, because he was depraved in that he had three felony convictions. That specific finding was unrelated to the earlier dysfunctional neglect proceedings. Even if respondent had been a party to the neglect proceedings, the court's finding of depravity would not have been based on respondent's lack of compliance with the court's June 2011 dispositional order. See *In re T.A.*, 359 Ill. App. 3d 953, 958, 835 N.E.2d 908, 912 (2005) ("[W]hen the trial court's unfitness finding is *not* based on an assessment of the parent's compliance with the dispositional order in the neglect proceedings ***—even a flaw that renders void an order entered therein—ha[s] no bearing on the subsequent termination case" (emphasis in original)); see also *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124 (2004) (quoting *In re C.L.T.*, 302

Ill. App. 3d 770, 772, 706 N.E.2d 123, 125 (1999) ("[A] finding of parental unfitness may be based on evidence sufficient to support any *one* statutory ground, even if the evidence is not sufficient to support other grounds alleged." (Emphasis in original))).

¶ 59 The dysfunctional neglect proceedings that occurred in this case were entirely preventable had the State and, in particular, the trial court conducted those proceedings in accordance with the Juvenile Court Act. Here, the State failed to comply with a basic tenet of our legal system—that is, naming respondent as a party to the proceedings—despite having every reason to do so. The court compounded that error by creating a legal fiction with which the State, GAL, and Mahon's attorney erroneously agreed.

¶ 60 III. CONCLUSION

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

¶ 62 Affirmed.