

**NOTICE**

Decision filed 06/08/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (5th) 230038-U

NO. 5-23-0038, 5-23-0039 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> O.D. and R.D., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 21-JA-144, 21-JA-145
	)	
Maleea M.,	)	Honorable
	)	Phoebe S. Bowers,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.  
Presiding Justice Boie and Justice Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court abused its discretion by denying respondent's motion to vacate default judgment.

¶ 2 This appeal arises from the decision of the circuit court of Macon County finding respondent, Maleea M., an unfit parent and terminating her parental rights as to her minor children, O.D. (No. 21-JA-144) and R.D. (No. 21-JA-145), after the court entered a default judgment for respondent's failure to appear. Respondent appeals the court's January 4, 2023, denial of her motion to vacate default judgment.<sup>1</sup> Respondent filed a timely notice of appeal in each case, and

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<sup>1</sup>The court also terminated the parental rights of the minor children's father, Roger D.; however, this appeal is solely on behalf of respondent.

these cases were consolidated for our review. For the following reasons, we reverse and remand the cause for further proceedings consistent with this order.

¶ 3

#### I. Background

¶ 4 We limit our recitation of the facts to those necessary for an adequate understanding of the case and resolution of the issue presented before us on appeal.

¶ 5 On August 19, 2021, the State filed petitions for adjudication of wardship, alleging the minor children were neglected and abused. The petitions listed respondent's address as 1154 E. Harrison Ave., Decatur, Illinois (Harrison address) and named Roger D. as the biological father of the minor children. At the time of the petition, O.D. was five days old (born on August 14, 2021) and R.D. was six years old (born on April 27, 2015). The petitions alleged both minor children were neglected due to an injurious environment in violation of sections 2-3(1)(b) and 2-3(1)(c) of the Juvenile Court Act of 1987 (Juvenile Court Act) (counts I and II) (705 ILCS 405/2-3(1)(b), (c) (West 2020)). In support, the petitions alleged that respondent and Roger D. were unable to properly care for the minor children because they both regularly abused substances. Specifically, on August 11, 2021, both parents tested positive for cocaine. Additionally, respondent attended only one prenatal appointment during her pregnancy with O.D. and tested positive for cocaine while there. Respondent admitted to cocaine use during the pregnancy, and both respondent and O.D. tested positive for cocaine in the hospital shortly after O.D. was born. Next, the petitions alleged both minor children were abused in violation of section 2-3(2)(ii) of the Juvenile Court Act, in that the parents created a substantial risk of physical injury to the minor children by other than accidental means which would be likely to cause death (count III) (*id.* § 2-3(2)(ii)).

¶ 6 Also on August 19, 2021, the circuit court held a shelter care hearing with respondent and Roger D. present. The parties stipulated that probable cause existed to believe the minor children

were neglected, abused, or dependent and that it was a matter of immediate and urgent necessity to place the minor children in shelter care. The court granted temporary custody and guardianship of the minor children to the Illinois Department of Children and Family Services (DCFS). The court admonished respondent and Roger D. that they risked termination of their parental rights unless they cooperated with DCFS, complied with their service plans, and corrected the conditions that were the basis for the removal of the minor children.

¶ 7 On September 8, 2021, the circuit court held a hearing with respondent and Roger D. present. The court advised the parties as to the nature of the State's August 19, 2021, petition, and the parties offered to stipulate to the allegations that the minor children were neglected due to an injurious environment in violation of sections 2-3(1)(b) and 2-3(1)(c) of the Juvenile Court Act (*id.* § 2-3(1)(b), (c)) (count I). The State dismissed counts II and III. The State presented the factual basis for the stipulation, and the court found the minor children neglected. The next day, the court entered adjudicatory orders finding the minors abused and neglected.

¶ 8 On September 24, 2021, and October 21, 2021, the State filed dispositional reports signed by the children's foster care case manager and supervisor. The reports listed respondent's address as the Harrison address. Shortly thereafter, the circuit court held a dispositional hearing on October 27, 2021, with respondent and Roger D. present. Following a hearing, the court ordered the minor children wards of the court and granted DCFS guardianship. On November 16, 2021, the court entered a dispositional order to that effect.

¶ 9 On April 21, 2022, the State filed a permanency report signed by the children's foster care case manager and supervisor with the goal of return home within 12 months. The report listed respondent's and Roger D.'s current address as "unknown." The report indicated that respondent and Roger D. had ongoing problems with substance abuse. Specific to respondent, the report stated

that she failed to (1) complete a required domestic violence/women's services assessment, (2) complete recommended substance abuse and mental health services following an assessment, and (3) complete a majority of random drug tests since August 2021. The record demonstrates that respondent completed only one drug screening test, although the State sent her 55 random drug drops. Additionally, respondent demonstrated a lack of communication and poor engagement. Specifically, the report indicated that respondent failed to (1) engage in required parenting classes, (2) regularly attend visitation with the minor children, (3) attend scheduled child and family team meetings on several occasions, (4) communicate with a housing advocate to secure stable housing after she was evicted, and (5) regularly answer her caseworker's phone calls and text messages.

¶ 10 On April 27, 2022, the circuit court held a permanency review hearing with respondent and Roger D. present. The court adopted a permanency goal of substitute care pending the court's determination of respondent's termination of parental rights and set a permanency review hearing for August 3, 2022.

¶ 11 On June 16, 2022, the State filed a petition seeking a finding of unfitness and termination of parental rights. The State listed respondent's address as "unknown."

¶ 12 On July 6, 2022, the State filed an affidavit for service by publication to respondent and Roger D. The State listed respondent's last known address as 8435 E. Blyton Rd., Smithfield, Illinois (Smithfield address) and Roger D.'s last known address as 805 S. Oak St., Bloomington, Illinois (Bloomington address). Also on July 6, 2022, the State filed notices of hearing. The notices of hearing stated that the hearing on the State's petition seeking a finding of unfitness and termination of parental rights was scheduled for July 20, 2022, at 10 a.m. and listed respondent's

address as the Smithfield address and Roger D.’s address as the Bloomington address.<sup>2</sup> The State indicated it would hand deliver the notices of hearing to respondent’s and Roger D.’s attorneys.

¶ 13 On July 7, 2022, the circuit clerk of Macon County emailed a notice of publication to the Decatur Tribune. Shortly thereafter on July 14, 2022, the circuit clerk issued notice of publication to respondent at the Smithfield address and to Roger D. at the Bloomington address.

¶ 14 On July 20, 2022, the circuit court held a hearing on the State’s petition seeking a finding of unfitness and termination of parental rights.<sup>3</sup> Respondent and Roger D. failed to appear at the hearing. The State indicated that it sent respondent and Roger D. notices of hearing. In response, respondent’s and Roger D.’s attorneys reported no contact with their clients. The following colloquy took place:

“MS. BOLTON [(ASSISTANT STATE’S ATTORNEY)]: I would ask that [respondent] and Roger D[.] and all whom it may concern be defaulted. Judgment to be filed. Permanency goal changed to adoption. \*\*\*

THE COURT: Okay. Mr. Mullison.

MR. MULLISON [(ATTORNEY FOR RESPONDENT)]: No position, Your Honor.

MR. BALLARD [(ATTORNEY FOR ROGER D.)]: No position.”

Without objection, the court stated that respondent and Roger D. “are defaulted” with “[j]udgment to be filed.” The court subsequently called an immediate permanency hearing and changed the permanency goal to adoption. Based on the report of proceedings, the court did not terminate respondent’s and Roger D.’s parental rights at this hearing. The court set a permanency review hearing for August 3, 2022.

¶ 15 On July 26, 2022, the State filed a permanency report signed by the children’s foster care case manager and supervisor with the goal changed to adoption. The report indicated that the

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<sup>2</sup>We note that the docket entry on July 6, 2022, in the record on appeal states: “Arraignment set for 07/20/2022 at 10:00 in courtroom 5B.”

<sup>3</sup>The report of proceedings, consistent with the docket entry from July 6, 2022, states “ARRAIGNMENT.”

circuit court terminated respondent's and Roger D.'s parental rights on July 20, 2022, and the court changed the goal to adoption. Additionally, the report stated that respondent and Roger D. "have not engaged in services since case opening." The State listed respondent's and Roger D.'s current address as 1484 E. Clay St., Decatur, Illinois (Clay address).

¶ 16 On July 27, 2022, the circuit clerk of Macon County received undeliverable mail, dated July 14, 2022, that stated on the envelope: "Return to Sender, Not Deliverable [a]s Addressed, Unable to Forward." The returned mail listed respondent's name and the Smithfield address.

¶ 17 On August 1, 2022, the circuit court entered written judgments finding respondent and Roger D. unfit parents and terminating their parental rights. The court stated that respondent and Roger D. "were defaulted as to Parental Fitness and Permanent Termination of Parental Rights" after they failed to appear at the July 20, 2022, hearing, despite receiving due notice. The court found respondent and Roger D. unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2020)), because respondent and Roger D. failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. The court also found respondent and Roger D. unfit under section 1(D)(m)(i) of the Adoption Act (*id.* § 1(D)(m)(i)), because respondent and Roger D. failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor children. The court also found respondent and Roger D. unfit under section 1(D)(m)(ii) of the Adoption Act (*id.* § 1(D)(m)(ii)), because respondent and Roger D. failed to make reasonable progress toward the return of the children to the parent during the nine-month periods from September 9, 2021, to June 9, 2022, and September 16, 2021, to June 16, 2022. The court determined it was in the minors' best interests to terminate respondent's and Roger D.'s parental rights. The court entered a permanency order with the goal changed to adoption.

¶ 18 On August 3, 2022, the circuit court held a permanency review hearing with respondent and Roger D. present. Respondent’s attorney informed the court that respondent intended to file a motion to vacate the court’s default judgment. The court adopted the permanency goal of adoption and entered a permanency order to that effect. The next day on August 4, 2022, respondent and Roger D. filed separate motions to vacate the circuit court’s July 20, 2022, default judgments.<sup>4</sup>

¶ 19 On January 4, 2023, the circuit court held a hearing on respondent’s and Roger D.’s motions to vacate default judgments. Respondent testified first. On direct examination, respondent testified that she did not receive notice for the July 20, 2022, hearing,<sup>5</sup> because the State incorrectly sent notice to the Smithfield address, which was an address that she lived at 11 years earlier. Respondent indicated that the Smithfield address “was not even involved with this case.” She testified that she provided her caseworker with the Clay address.

¶ 20 Next, the State cross-examined respondent. Respondent admitted that she missed several visits with her children. When the State indicated that respondent provided the Clay address after the circuit court terminated her parental rights, respondent stated that the State “should have had a Leafland address” and “[t]hey should have also had the Harrison address \*\*\* where the kids were removed from the house.” Respondent testified that she spoke with her attorney twice before the July 20, 2022, hearing, although she was unsure of the dates, and she stated that the “only date I missed in court was [on July 20, 2022] when I did [not] know about it.”

¶ 21 The guardian *ad litem* cross-examined respondent next. Respondent initially testified that she did not provide her attorney with her change in address. She then stated, however, that she

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<sup>4</sup>The record on appeal for R.D. (21-JA-145) shows that respondent and Roger D. filed motions to vacate default judgment on July 27, 2022; however, the record on appeal for O.D. (21-JA-144) shows the motions were filed on August 4, 2022, after the circuit court entered its order on August 1, 2022.

<sup>5</sup>The State and counsel for respondent stated that respondent did not attend court on August 3, 2022; however, respondent did not attend court on July 20, 2022. She was present in court with her attorney on August 3, 2022.

provided him with the Clay address prior to the July 20, 2022, and August 3, 2022, hearings. Respondent admitted that she did not inform the circuit clerk of her change in address.

¶ 22 The circuit court then questioned respondent. Respondent testified that she had contact with her caseworkers between April 2022 and July 20, 2022, even though the April 21, 2022, report indicated that her caseworker did not have contact with respondent. Respondent testified that she called her caseworker on July 20, 2022, to request visitation with her children. At that time, the caseworker informed respondent that she missed court that morning.

¶ 23 Next, Roger D. testified to the following. On direct examination, Roger D. testified that the State sent the notice of hearing to his parents' house, although Roger D. lived at the Clay address since March 2022. Roger D.'s father received the notice of hearing and informed Roger D. of the July 20, 2022, hearing. Despite this, Roger D. and respondent were two hours late, at which time they visited Roger D.'s attorney's office to inform him that they missed the hearing.

¶ 24 Next, the State cross-examined Roger D. Roger D. admitted that his father informed him of the July 20, 2022, hearing. Roger D. testified, however, that he "didn't know the court date was for [me]" but "assumed [the hearing] was for my son."<sup>6</sup> Roger D. could not recall when he spoke with his attorney after the July 20, 2022, hearing, and he admitted that he did not inform the circuit clerk of a change of address prior to the April 21, 2022, permanency report that listed his address as "unknown."

¶ 25 The guardian *ad litem* cross-examined Roger D. next. Roger D. again testified that his father informed him of the July 20, 2022, hearing. Respondent and Roger D., however, arrived at the courthouse two hours after the hearing due to "truck problems" and poor weather conditions.

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<sup>6</sup>The record indicates that R.D. lived at his paternal grandparents' house.



The following discussion took place between Roger D. and the appointed guardian *ad litem* regarding notice for the July 20, 2022, hearing:

“Q. What time did they [(Roger D.’s parents)] call you?

A. I want to say it was in the afternoon. My dad gets off of work at five. And then I told him we missed the court date, came up here, and we were two [*sic*] late. We were informed that we lost parental rights—

Q. Well, wait. If they called you at five o’clock and the court date was at 10 o’clock how were you able to get here two hours late?

A. We’ve had transportation problems in the process. \*\*\*

Q. But you had to go back in time. If your father gets off work at five—

\* \* \*

A. On the same day of the court date is when my father called me at nighttime, let me know that I had to be in court on the 20th. And I said dad, we went to court on the 20th, but we were two hours late.

Q. How did you know to be in court if you spoke with your father in the evening?

A. On my goodness.

\* \* \*

THE COURT: Let me \*\*\* why did you go to the courthouse on July 20th?

[ROGER D.]: ‘Cause we were told to go to court.

THE COURT: By whom?

[ROGER D.]: By my father.

THE COURT: But you’re telling us now you \*\*\* talked to him at five o’clock on July 20th and that’s when you find [*sic*] out that you had court. Do you see where we’re confused?

[ROGER D.]: Yes, ma’am. But you guys[’] court date was the 21st—wasn’t it the 21st?

THE COURT: No.

[ROGER D.]: Or the 20th.

MR. FINNEY [GUARDIAN *AD LITEM*]: No. The 20th.

[ROGER D.]: \*\*\* He [(Roger D.’s father)] told me we had to be in court at a certain time so I—we were late getting here, which was two hours prior to the court date. That’s what I was told.”

Roger D. then stated, “I did talk to my father[,] and he did let us know to be [at court].” Roger D. claimed they were two hours late to the hearing, due to “truck problems” and poor weather conditions.

¶ 26 Lastly, the circuit court questioned Roger D. Roger D. clarified that his father informed him that the July 20, 2022, hearing was at 10 a.m. Roger D. missed court, however, due to transportation issues.

¶ 27 Following argument by the parties, the circuit court denied respondent's and Roger D.'s motions to vacate default judgment. The court reasoned that "[t]he State did what they were required to do, which was to send notice to the parents through their attorneys." Despite this, neither parent informed their attorneys, the circuit clerk, or their caseworker of their current address. The court stated that it "seem[ed] like you've been missing in action during several months in this case right before this was set for hearing."

¶ 28 Based on the testimony and evidence presented before the circuit court, the court concluded that respondent and Roger D. "knew of the [hearing] from the testimony I heard today, the night before and you were late to court." According to the court, the State complied with its requirement to send notice to the parents through the attorneys, while respondent and Roger D. failed to inform the relevant parties of their change in address and maintain communication with their attorneys. Respondent filed a timely notice of appeal.

¶ 29 II. Analysis

¶ 30 The sole issue in this case is whether the circuit court abused its discretion when it denied respondent's motion to vacate the court's judgment finding that respondent defaulted on the State's petition to terminate her parental rights to her two minor children after respondent failed to appear at the hearing on the State's petition. As a result, the court entered a default judgment terminating respondent's parental rights. We find the court's imposition of such a drastic measure to be an abuse of discretion. For the following reasons, we reverse.

¶ 31 Termination of parental rights is a drastic measure. *In re D.R.*, 307 Ill. App. 3d 478, 482 (1999). It is a determination that the person as a matter of law should not continue in the legal status as parent and removes "the entire bundle of parental rights, custodial and noncustodial." *Id.* (quoting *In re T.G.*, 147 Ill. App. 3d 484, 488 (1986)). "A parent's interest in maintaining a

parental relationship with her child is a fundamental liberty interest protected by the due process clause of the fourteenth amendment.” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). Because of this interest, certain due process safeguards are afforded to parents in actions to terminate their parental rights, which include the right to be heard, to present evidence, and to cross-examine witnesses. *Id.*; see also 705 ILCS 405/1-5 (West 2020).

¶ 32 Although a parent has the right to be present at a hearing to terminate parental rights, it is not mandatory that she be present, and the circuit court is not obligated to wait until she chooses to appear. *In re C.L.T.*, 302 Ill. App. 3d 770, 778 (1999) (citing *In re Williams*, 36 Ill. App. 3d 917, 921 (1976)). That said, however, a sanction causing a default judgment is “the most severe discovery sanction [that] the court can impose,” and is “proper only where the sanctioned [parent’s] conduct showed deliberate, contumacious, or unwarranted disregard for the court’s authority.” *D.R.*, 307 Ill. App. 3d at 482 (citing *Hartnett v. Stack*, 241 Ill. App. 3d 157, 173 (1993)). We review a circuit court’s decision to enter a default judgment against a parent for an abuse of discretion. *In re B.C.*, 317 Ill. App. 3d 607, 612 (2000). An abuse of discretion occurs when the court acts arbitrarily or when its ruling “ ‘exceeds the bounds of reason.’ ” *D.R.*, 307 Ill. App. 3d at 482 (quoting *In re Marriage of Malter*, 133 Ill. App. 3d 168, 180 (1985)).

¶ 33 With these principles in mind, we do not believe respondent’s failure to appear in this case warrants the circuit court’s harsh sanction of denying her the right to be heard, to present evidence, and to cross-examine witnesses before the court terminated her parental rights to her two minor children. Although it is undisputed that the State incorrectly sent respondent notice to the Smithfield address, we cannot conclude that respondent lacked notice. The record reflects that respondent’s attorney was aware of the July 20, 2022, hearing and appeared at the proper date and time. Respondent had a duty to follow the progress of her case and to learn from her attorney of

the date of the next hearing, which required her to stay in regular communication with her attorney. *C.L.T.*, 302 Ill. App. 3d at 778 (citing *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657 (1994)); see also *Eckel v. Bynum*, 240 Ill. App. 3d 867, 875 (1992).

¶ 34 Despite this, however, the record indicates that respondent attended every hearing from August 19, 2021, through April 27, 2022, which was the date of the last hearing before the State filed its petition on June 16, 2022, seeking a finding of unfitness and termination of parental rights. Although the record indicates that obtaining respondent's address where she could be served was an issue throughout the proceedings, she only missed one court date—the court date that led to the termination of her parental rights. The circumstances surrounding her failure to appear on this one occasion included the State incorrectly sending her notice to the wrong address, her presumably learning of the court date from Roger D., and her inability to arrive on time at the hearing due to transportation issues. Whether or not respondent's failure to appear was voluntary or not, her counsel was present at the hearing and could have argued on her behalf, or requested the court take the State's motion for default judgment under advisement to provide counsel the opportunity to locate respondent. We simply cannot conclude that respondent's conduct showed deliberate, contumacious, or unwarranted disregard for the court's authority in this instance. "Where the interests at stake are so finite, a mother's parental rights should not be lightly forfeited." *D.R.*, 307 Ill. App. 3d at 483 (citing *Blakey v. Blakey*, 72 Ill. App. 3d 946, 947 (1979)). We find that the court exceeded the bounds of its authority in granting the State's motion for default in this case, leading to an erroneous deprivation of her parental rights.

¶ 35 Accordingly, we conclude that the circuit court abused its discretion by denying respondent's motion to vacate default judgment.

¶ 36

### III. Conclusion

¶ 37 For the abovementioned reasons, we reverse the circuit court's denial of respondent's motion to vacate default judgment, vacate the default judgment, and remand for further proceedings consistent with this order.

¶ 38 Reversed; cause remanded; default judgment vacated.