Loyola University Chicago Law Journal

Volume 19
Issue 2 *Winter 1988 1986-1987 Illinois Law Survey*

Article 10

1988

Juvenile Law

Anita Weinberg
Assist. Public Guardian, Cook County Public Guardian Office

Lucia Nale

Juvenile Law

*Anita Weinberg**
*and Lucia Nale***

TABLE OF CONTENTS

I. INTRODUCTION

During the *Survey* year, most important decisions in juvenile law were made at the appellate court level. This article will discuss cases concerning notice requirements for proceedings initiated under the Juvenile Court Act in delinquency and abuse and neglect cases,[1] parental rights,[2] the rights of parties other than parents to be heard during dependency proceedings,[3] and the sufficiency of

* Assistant Public Guardian, Cook County Public Guardian Office; J.D., 1986, Loyola University of Chicago; M.S.S.W., 1977, Columbia University School of Social Work.

** B.A., 1986, Loyola University of Chicago; J.D. candidate, 1989, Loyola University of Chicago.

1. *See infra* notes 9-52 and accompanying text.
2. *See infra* notes 83-100 and accompanying text.
3. *See infra* notes 101-21 and accompanying text.

evidence in juvenile cases.[4] This article will also discuss an Illinois Supreme Court decision concerning the determinate sentencing of minors to the Department of Corrections,[5] and the new legislation that rendered inapplicable the decision.[6]

In the area of juvenile legislation, the Illinois legislature recently passed two important bills. One provides that commitment of a delinquent to the Department of Corrections must be for an indeterminate term.[7] The second law establishes protections for children in the child welfare system by identifying family preservation services that the Department of Children and Family Services (the "DCFS") must offer, and by requiring court documentation of efforts made by DCFS and the probation department to prevent removal of children from their homes and to facilitate reunification.[8]

II. Case Law

A. Jurisdiction

Notice requirements for proceedings initiated under the Juvenile Court Act continue to pose problems in obtaining proper jurisdiction over the parties involved in a juvenile court proceeding. The Juvenile Court Act sets forth the requirements of valid notice to interested parties who must be named as respondents.[9] During the *Survey* year, Illinois appellate courts addressed the problem of properly invoking the court's jurisdiction in juvenile court proceedings. Many decisions confronted problems concerning the necessity of obtaining jurisdiction over the minor's parents or legal guardian, the minor himself, and any person whose legal rights could be affected by the proceedings.

1. Notice to Parents or Legal Guardians

Two appellate court cases specifically addressed the notice requirements in delinquency proceedings.[10] First, *People v. S.S.*[11] in-

4. *See infra* notes 122-60 and accompanying text.
5. *See infra* notes 53-72 and accompanying text.
6. *See infra* notes 161-65 and accompanying text.
7. *See infra* notes 161-65 and accompanying text.
8. *See infra* notes 166-78 and accompanying text.
9. Ill. Rev. Stat. ch. 37, paras. 704-1 to 704-4 (1985).
10. *In re* T.M.F., 155 Ill. App. 3d 1026, 508 N.E.2d 1160 (4th Dist. 1987); People v. S.S., 146 Ill. App. 3d 681, 496 N.E.2d 1165 (1st Dist. 1986). For Illinois cases regarding failure to provide notice to parents or guardians, see generally *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985); People v. R.S., 104 Ill. 2d 1, 470 N.E.2d 297 (1984); People v. R.D.S., 94 Ill. 2d 77, 445 N.E.2d 293 (1983); *In re* D.L.F., 136 Ill. App. 3d 873, 483 N.E.2d 1300 (3d Dist. 1985).
11. 146 Ill. App. 3d 681, 496 N.E.2d 1165 (1st Dist. 1986).

volved a petition for adjudication of wardship and delinquency, in which failure to name the minor's legal guardian as a respondent rendered the court's adjudication void for lack of jurisdiction.[12]

The petition for adjudication of wardship named the minor, his mother, and his father as respondents.[13] Paragraph 704-1(2) of the Juvenile Court Act, however, requires that a minor's legal guardian or custodian be named also as a respondent.[14] The minor's record revealed that he had been removed from his mother's custody and was living with his paternal grandmother, his appointed legal guardian.[15] The record further revealed that sixteen days after filing the petition for adjudication of wardship, the State became aware of the grandmother's guardianship of the minor.[16]

The Illinois Appellate Court for the First District held that the failure to comply with the statutory jurisdictional requirements rendered the trial court's orders void for lack of jurisdiction.[17] Although the minor visited with his mother at the time the petition was filed, the mother's presence at the proceedings did not meet the notice requirements of the Juvenile Court Act.[18]

In re T.M.F.[19] also addressed the problem of failing to serve a necessary respondent. In *T.M.F.*, the Illinois Appellate Court for the Fourth District reaffirmed the rule that failure to comply with the statutory notice requirements of the Juvenile Court Act renders the court's orders void for lack of personal jurisdiction.[20] In *T.M.F.*, all interested parties were properly named as respondents. The State, however, failed to obtain service upon the minor's natural mother.[21] The court held that although the minor's parents

12. *Id.* at 683, 496 N.E.2d at 1167. The trial court found the minor guilty of voluntary manslaughter and adjudicated him a delinquent and a ward of the court. The court placed him on probation for two years. *Id.*

13. *Id.* at 681, 496 N.E.2d at 1165.

14. *Id.* at 682, 496 N.E.2d at 1166 (citing ILL. REV. STAT. ch. 37, para. 704-1(2) (1985)).

15. *Id.* At the time the petition was filed, the minor was visiting with his mother for the summer but remained under the guardianship of his grandmother. *Id.*

16. *Id.*

17. *Id.* at 683, 496 N.E.2d at 1167.

18. *Id.* at 683, 496 N.E.2d at 1166 (citing People v. R.D.S., 94 Ill. 2d 77, 445 N.E.2d 293 (1983)). In a nearly identical fact situation, the Illinois Supreme Court in *R.D.S.* held that failure to name and serve the legal guardian rendered the trial court's orders void. *R.D.S.*, 94 Ill. 2d at 83, 445 N.E.2d at 294. At the time the petition was filed, the minor was living with his mother but under the guardianship of the Department of Children and Family Services. *Id.*

19. 155 Ill. App. 3d 1026, 508 N.E.2d 1160 (4th Dist. 1987).

20. *Id.* at 1029, 508 N.E.2d at 1162 (citing ILL. REV. STAT. ch. 37, paras. 704-1 to 704-4 (1985)).

21. *Id.* at 1027, 508 N.E.2d at 1163.

were divorced, service upon the father alone was insufficient, particularly when the record revealed that the State knew the mother's whereabouts at the outset of the proceedings.[22] Therefore, the appellate court reversed the circuit court orders adjudicating the minor a delinquent and ward of the court, and remanded the case for further proceedings.[23]

2. Notice to Minors

During the *Survey* year, Illinois appellate courts once again confronted the technical problem of proper notice to minors. In Illinois, a minor cannot enter an appearance on his or her own behalf. Rather, jurisdiction over the minor may be obtained only through service of process.[24] Prior to its being amended by the legislature, paragraph 704-3 of the Juvenile Court Act required that service of process be directed to the minor.[25] Illinois appellate courts interpreted paragraph 704-3 to require personal service on a minor no matter what his age.[26] As a result, even an infant, upon whom service would be incomprehensible, had to be served. Failure to

22. *Id.* at 1029, 508 N.E.2d at 1163 (distinguishing *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985)). In *J.P.J.*, failure to serve a noncustodial parent whose whereabouts were not known did not deprive the court of jurisdiction. *J.P.J.*, 109 Ill. 2d at 136, 485 N.E.2d at 852. The court in *T.M.F.* held that reliance on *J.P.J.* was inapposite because the mother's whereabouts were known, and it was not clear which parent had legal custody. *T.M.F.*, 155 Ill. App. 3d at 1029, 508 N.E.2d at 1162.

23. *T.M.F.*, 155 Ill. App. 3d at 1029, 508 N.E.2d at 1162-63. In remanding the case back to the circuit court for further proceedings, the court indicated that failure to provide statutory notice merely deprived the court of personal jurisdiction. *Id.* at 1029, 508 N.E.2d at 1162. The court, citing People v. R.S., 104 Ill. 2d 1, 470 N.E.2d 297 (1984), noted that the notice requirements are also jurisdictional requirements. *Id.* According to the *T.M.F.* court, however, the supreme court in *R.S.* remanded the case to the circuit court and indicated that subject matter jurisdiction was proper although the circuit court's previous orders were void. *Id.*

Although *T.M.F.* indicates that failure to comply with statutory notice requirements merely deprives the court of personal, and not subject matter jurisdiction, it should be noted that the question was left unresolved by the Illinois Supreme Court in *In re* J.P.J., 109 Ill. 2d 129, 485 N.E.2d 848 (1985). *See supra* note 22.

24. Bonnell v. Holt, 89 Ill. 71 (1878).

25. *See* ILL. REV. STAT. ch. 37, para. 704-3 (1985). The legislature, aware of the technical notice problems, amended paragraph 704-3 regarding summons. Personal service upon the minor is no longer required. The act, effective January 12, 1987, now allows summons to be directed to the minor's legal guardian or custodian on behalf of the minor. When the guardian or custodian is an Illinois state agency, proper service may be obtained by leaving a copy of the summons with the proper employee of the agency. *Id. See also* ILL. REV. STAT. ch. 37, para. 704-3 (Supp. 1987).

26. For cases in which failure to obtain service upon the minor deprived the court of jurisdiction over the minor, see generally *In re* K.E., 151 Ill. App. 3d 1055, 504 N.E.2d 191 (3d Dist. 1987); *In re* K.C., 154 Ill. App. 3d 158, 506 N.E.2d 724 (4th Dist. 1987); *In re* Pronger, 148 Ill. App. 3d 311, 499 N.E.2d 155 (4th Dist. 1986), *cert. granted*, 113 Ill. 2d 575, 505 N.E.2d 361 (1987); *In re* Crouch, 131 Ill. App. 3d 694, 476 N.E.2d 69 (4th

personally serve the minor deprived the court of jurisdiction, and thus rendered all orders entered by the juvenile court void. This would result even when the minor and his legal guardian were present.

In an attempt to solve the problematic requirements of service of process on minors, the Illinois legislature amended paragraph 704-3. Following the amendment, the court could obtain jurisdiction over the minor through service upon the minor's legal guardian or custodian, and to each person named as a respondent.[27] During the *Survey* year, no appellate or supreme court decisions addressed the effect of the new summons provision in paragraph 704-3(1) and 704-5(c).

In *In re R.A.B.*,[28] however, the Illinois Appellate Court for the Fourth District addressed a similar issue concerning jurisdiction over the minor. In *R.A.B.*, service was obtained properly on a minor pursuant to an original petition for adjudication of delinquency.[29] Three months later, the State filed a supplemental petition for which no service was obtained upon the minor.[30] The court held a consolidated hearing regarding both petitions, and adjudged the minor a delinquent.[31] The dispositional hearing resulted in an order of probation. Subsequently, the court revoked the probation and committed the minor to the Department of Corrections.[32]

On appeal, the minor claimed that failure to serve the supple-

---

Dist. 1985), *appeal denied*, 106 Ill. 2d 554 (1985); *In re* Phillip Day, 138 Ill. App. 3d 783, 486 N.E.2d 307 (4th Dist. 1985).

27. ILL. REV. STAT. ch. 37, para. 704-3 (Supp. 1987) (effective January 12, 1987), (amended by Public Act 84-1460. *See* 1986 Ill. Legis. Serv. 84-1460 (West)). After the *Survey* period, the Illinois legislature once again amended paragraph 704-3(1) in an attempt to further correct the technical problems of service to minors. 1987 Ill. Legis. Serv. 85-720 (West). Public Act 85-720 amends paragraph 704-3(1) to provide that summons need not be directed to a minor respondent under eight years of age, provided a guardian *ad litem* is appointed and appears on behalf of the minor. *Id.* The new changes became effective January 1, 1988. *Id.*

28. 146 Ill. App. 3d 993, 497 N.E.2d 811 (4th Dist. 1986).

29. *Id.* at 994, 497 N.E.2d at 812. The original petition charged the minor with four counts of residential burglary. *Id.*

30. *Id.* The supplemental petition charged the minor with an additional offense of residential burglary. *Id.*

31. *Id.*

32. *Id.* at 995, 497 N.E.2d at 812. The dispositional order entered April 24, 1985 was not appealed. On October 24, 1985, a hearing to revoke probation pursuant to proper service was held. On December 4, 1985, the court entered an order revoking the minor's probation and committing him to the Department of Corrections. It was this dispositional hearing from which the minor appealed, presenting the question of jurisdiction for the first time. *Id.*

mental petition deprived the court of jurisdiction.[33] The minor reasoned that because the court relied on the supplemental petition in reaching the order of delinquency during the consolidated hearing, combining the petitions deprived the court of personal jurisdiction and rendered the order of delinquency void. Thus, the minor argued that all of the subsequent orders were also void.[34]

The appellate court rejected the minor's argument[35] and concluded that proper service as to the original petition vested the court with jurisdiction over the minor.[36] The court further stated that the circuit court had the power to enter an adjudicatory order of delinquency pursuant to the original petition. Therefore, the court rejected the minor's argument that joinder of the supplemental petition acted to deprive the court of jurisdiction.[37] Accordingly, the court affirmed the dispositional orders.[38]

The appellate court in *R.A.B.* discussed also whether new service is required if a supplemental petition is filed before the hearing of the original petition.[39] The court noted that the summons requirements in paragraph 704-3 of the Juvenile Court Act require service

33. *Id.*

34. *Id.* The minor made no complaint concerning the subsequent dispositional proceeding that revoked probation. Rather, the minor claimed that the subsequent order was void because it was predicated upon a void adjudicatory order of delinquency. *Id.*

35. *Id.* at 995, 497 N.E.2d at 813. The minor relied on *In re* R.P., 97 Ill. App. 3d 889, 423 N.E.2d 920 (3d Dist. 1981). In *R.P.*, a consolidated hearing was held for an original and supplemental petition, both of which were properly served. *R.P.*, 97 Ill. App. 3d at 891, 423 N.E.2d at 921. The court held a separate hearing pursuant to a second supplemental petition, for which service was never obtained. *Id.* The court entered a single dispositional order pursuant only to the second supplemental petition. *Id.* The appellate court in *R.P.* concluded that the dispositional order was void because it was predicated entirely upon a void adjudicatory petition, for which no service had ever been obtained. *Id.* at 893, 423 N.E.2d at 922.

The court in *R.A.B.* distinguished *R.P.*, noting that unlike *R.P.*, the adjudicatory order entered by the circuit court in *R.A.B.* was entered pursuant to two petitions, one of which was properly served. *R.A.B.*, 146 Ill. App. 3d at 995, 497 N.E.2d at 813. The court in *R.A.B.* further noted that even had the court in *R.P.* proceeded pursuant to both the original petitions and the second supplemental petition, the court would still reject the precedent of *R.P. Id.*

36. *R.A.B.*, 146 Ill. App. 3d at 995, 497 N.E.2d at 813.

37. *Id.* at 996, 497 N.E.2d at 813. It should be noted that the court in *R.A.B.* acknowledged that the combined adjudicatory hearing may have constituted error. *Id.* The minor's failure to appeal from the dispositional order entered April 24, 1985, however, waived any such error. *Id.* Nonetheless, the court concluded that any such error did not deprive the court of jurisdiction. *Id.* In addition, the minor made no complaint concerning the subsequent dispositional order revoking the minor's probation. Therefore, the court affirmed the dispositional order committing the minor to the Department of Corrections. *Id. See also supra* notes 32 and 34 and accompanying text.

38. *R.A.B.*, 146 Ill. App. 3d at 994, 497 N.E.2d at 812.

39. *Id.* at 997, 497 N.E.2d at 814. The court recognized that although the rights afforded to minors in juvenile delinquency proceedings bear similarity to the rights af-

and issuance of "a" summons upon the filing of "a" petition.[40] The court stated that paragraph 701-15 defines "petition" to include a supplemental petition.[41] Therefore, the court concluded that the plain statutory language clearly requires additional service for a supplemental petition, even when filed before the hearing on the original petition. The court, however, expressed its reservations about whether the drafters of the act intended such a result.[42]

3. Notice to Interested Parties

Due process safeguards require service of process to both minors and their parents in juvenile proceedings. These safeguards extend also to a party whose legal rights may be affected by the juvenile proceeding. In *In re S.A.C.*,[43] the Illinois Appellate Court for the Fourth District reversed a contempt order against an adult accused of violating a protective order issued in a juvenile case.[44] Although the court had proper jurisdiction over the delinquency proceeding, the court did not have jurisdiction to enter a protective order against the appellant, Rasmussen, who neither had been named as a respondent nor served with process.[45]

The court explained that paragraph 705-5 of the Juvenile Court Act allows a court in juvenile proceedings to issue orders of protection against any person "who is before the court on the original or supplemental petition."[46] Paragraph 704-1(4) of the Juvenile Court Act further requires naming any persons against whom protective orders are sought as respondents.[47] Finally, paragraph 704-3(1) requires the issuance of a subpoena to each person named as a respondent.[48] Therefore, the court concluded that the language of

---

forded an accused in criminal proceedings, the procedure followed in juvenile proceedings adheres to the requirements of civil procedure, including service of process. *Id.*

40. *Id.* (citing ILL. REV. STAT. ch. 37, para. 704-3 (1983)).

41. *Id.* (citing ILL. REV. STAT. ch. 37, para. 701-15 (1983)).

42. *Id.* The court recognized the largely procedural nature of juvenile proceedings, and questioned the required result of the statutory language. The court noted that the Illinois Code of Civil Procedure allows petitions to be amended or supplemented without further service while they are still pending. *Id.* (citing ILL. REV. STAT. ch. 110, paras. 1-101 to 19c-101 (1985)).

43. 147 Ill. App. 3d 656, 498 N.E.2d 285 (4th Dist. 1986).

44. *Id.* at 659, 498 N.E.2d at 287.

45. *Id.* Rasmussen was physically present in the court room during the delinquency proceeding. His appearance, however, did not constitute a waiver of the notice requirements. *Id. See also infra* note 52.

46. *S.A.C.*, 147 Ill. App. 3d at 658, 498 N.E.2d at 286 (citing ILL. REV. STAT. ch. 37, para. 705-5 (1983)).

47. *Id.* (citing ILL. REV. STAT. ch. 37, para. 704-1(4) (1983)).

48. *Id.* (citing ILL. REV. STAT. ch. 37, para. 704-3(1) (1983)).

paragraph 705-5 was subject to the provisions of 704-1(4) and 704-3(1).[49] Because Rasmussen was neither named as a respondent nor served with process, he was not before the court for the purposes of paragraph 705-5, although he was physically present in the courtroom.[50] Accordingly, the court concluded that the protective order was void for lack of jurisdiction and declared the contempt order a nullity.

Additionally, the *S.A.C.* court recognized that an adult respondent in a juvenile case may waive the right to receive a summons by making a physical appearance.[51] The court stated, however, that if a court order affects the legal right of a person to associate with others, such an order cannot be entered unless that person is afforded a reasonable opportunity to be present and heard at the proceedings.[52]

B. Dispositions

In *People v. S.L.C.*,[53] the Illinois Supreme Court addressed the

49. *Id.* The Illinois legislature, after the *Survey* period, enacted Public Act 85-720, amending paragraphs 705-5 and 704-1. *See* 1987 Ill. Legis. Serv. 85-720 (West). Public Act 85-720 became effective January 1, 1988. Paragraph 705-5(1) has been amended to delete the requirement that the person against whom a protective order is sought be before the court on the original or supplemental petition. *Id.* The act amends also paragraph 704-1(4) to delete the requirement that the person against whom a protective order is sought be named as a respondent. *Id.* The changes appear to be in response to the appellate court's decision in *In re* S.A.C. and effectively reversed that decision. *See also infra* notes 51-52 and accompanying text.

50. *S.A.C.*, 147 Ill. App. 3d at 658, 498 N.E.2d at 287.

51. *Id.* Such result could not be obtained in *S.A.C.* because although Rasmussen was present during the juvenile case, he was never properly named as a respondent. Therefore, the summons requirement could not be waived. *Id.*

52. *Id.* (citing *In re* Rider, 113 Ill. App. 3d 1000, 447 N.E.2d 1384 (1983)). In *Rider*, the appellate court concluded that subjecting a parent to a protective supervision order deprived the parent of fundamental fairness and due process because he was not represented by counsel. Although the father was named as a respondent and present in court, without counsel, he was not afforded a fair opportunity to present his objection to the order. The court in *S.A.C.* further stated that, like the father in *Rider*, Rasmussen did not have a meaningful opportunity to object to the court's issuance of the protective order against him. *S.A.C.*, 147 Ill. App. 3d at 659, 498 N.E.2d at 287.

It should be noted that Public Act 85-720, discussed *supra* at note 49, further amends paragraph 705-5 to delineate the rights of a person against whom a protective order is sought to be present and heard at the proceedings. 1987 Ill. Legis. Serv. 85-720 (West). Paragraph 705-5(2) has been recodified as paragraph 705-5(4) and paragraphs 705-5 (2), (3), (6), (7), (8) have been newly added. *Id.* Paragraph 705-5, as now amended, provides that any person against whom an order of protection is sought has the right to be present and heard at the hearing and to retain counsel. *Id.* Only a parent, guardian, legal custodian or responsible relative, however, is a party or respondent with the additional right to appointed counsel. *Id.*

53. 115 Ill. 2d 33, 503 N.E.2d 228 (1986).

question of whether a trial court has the authority to commit a minor to the Department of Corrections for a determinate period of time. In *S.L.C.*, the trial court adjudicated a minor a delinquent and entered an order of wardship.[54] At the subsequent dispositional hearing, the trial judge orally committed the minor to the Juvenile Division of the Illinois Department of Corrections for a period of one year.[55] The written dispositional order, however, simply committed the minor to the Department without refering to the one year period.[56] The minor appealed, challenging only the correctness of his commitment, and not the adjudicatory order of delinquency. The minor requested that the written dispositional order be corrected to reflect the trial judge's oral pronouncement.[57]

The appellate court found that the trial judge had the authority to commit the juvenile for a determinate period of time and reversed commitment for an indeterminate period. The court then remanded the case for entry of the appropriate dispositional order.[58] The Illinois Supreme Court granted the State's petition for leave to appeal.[59]

The Illinois Supreme Court noted that paragraph 705-10 of the Juvenile Court Act governed commitment to the Department of Corrections.[60] The court emphasized that paragraph 705-10 permits a court to commit a delinquent minor adjudged a ward of the court to the Department of Corrections. The court also indicated that if such commitment takes place, the court must appoint the

54. *Id.* at 36, 503 N.E.2d at 229. The minor was charged with burglary, felony theft, and misdemeanor theft. *Id.*

55. *Id.* at 37, 503 N.E.2d at 229.

56. *Id.*

57. *Id.*

58. *Id.* (citing *S.L.C.*, 133 Ill. App. 3d at 230, 478 N.E.2d at 883 (3d Dist. 1985)).

59. *S.L.C.*, 115 Ill. 2d at 38, 503 N.E.2d at 229. Prior to the State's filing of petition to appeal on May 31, 1985, the trial judge entered an amended written dispositional order committing the minor for a period of one year on May 17, 1985. *Id.* On September 6, 1985, the minor was released on parole. *Id.* On December 13, 1985, six days before expiration of the one year commitment, an agreed order between the State and the minor's attorney was entered providing that the minor remain under supervision of the Department until the status of the original dispositional written order was decided by the Illinois Supreme Court. *Id.*

Subsequently, the State filed a status report with the Illinois Supreme Court outlining the changed circumstances. *Id.* The minor contended that expiration of his one year term rendered the State's appeal moot. *Id.* at 39, 503 N.E.2d at 230. The State argued, however, that placement of the minor under the Department's supervision continued the Department's jurisdiction over the minor, thus subjecting him to recommitment. Therefore, the State claimed that the appeal had not been rendered moot. *Id.*

The Illinois Supreme Court held that the appeal was not moot. *Id.*

60. *Id.* at 42, 503 N.E.2d at 231 (citing ILL. REV. STAT. ch. 37, para. 705-10 (1983)).

Assistant Director of Correction as legal custodian of the minor.[61] Paragraph 705-10 further requires that when the Department lawfully discharges the minor from its custody and control, the Assistant Director must petition the court to terminate custodianship over the minor.[62]

In addition, the court noted that the Juvenile Court Act provides that all proceedings under the Act regarding the minor automatically terminate upon the minor attaining the age of twenty-one years.[63] The Act also allows the court to terminate wardship at any time, if the best interests of the minor no longer require wardship.[64]

The minor argued that paragraph 705-10 did not mandate the minor's committment until the age of twenty-one.[65] In addition, the minor argued that, pursuant to 705-11(2), the court could, in its discretion, terminate the Department of Corrections's custodianship before a minor attained the age of twenty-one.[66] Therefore, the minor contended, the trial judge had the inherent power to commit the minor for a determinate period.[67] The State maintained that pursuant to paragraph 705-11(2), wardship must be terminated prior to a court's termination of the Department of Correction's custody because adjudication of wardship is a prerequisite to commitment of a minor to the custody of the Department of Corrections.[68]

The Illinois Supreme Court rejected the State's argument, and affirmed the appellate court's holding that the court could commit a juvenile for a determinate period.[69] The court noted that two distinct relationships exist between the Department of Correction's custodianship and the court's wardship. Moreover, paragraph 705-8(3) of the Juvenile Court Act allows a court to terminate custodianship prior to wardship.[70] Paragraph 705-11(2) allows a court to terminate wardship, and then terminate custodianship.[71]

---

61. *Id.* at 43, 503 N.E.2d at 232.

62. *Id.* Unless the court orders otherwise, custodianship terminates automatically thirty days after receipt of the petition. ILL. REV. STAT. ch. 37, para. 705-10(4) (1985).

63. *S.L.C.*, 115 Ill. 2d at 43, 503 N.E.2d at 232 (citing ILL. REV. STAT. ch. 37, para. 705-11(1) (1983)).

64. *Id.* (citing ILL. REV. STAT. ch. 37, para. 705-11(2) (1983)).

65. *Id.* at 44, 503 N.E.2d at 232.

66. *Id.*

67. *Id.*

68. *Id.* at 45, 503 N.E.2d at 233.

69. *Id. But see infra* notes 161-65 and accompanying text.

70. *Id.* at 44, 503 N.E.2d at 232 (citing ILL. REV. STAT. ch. 37, para. 705-8(3) (1983)).

71. *Id.* (citing ILL. REV. STAT. ch. 37, para. 705-11(2) (1983)).

Therefore, the Illinois Supreme Court concluded that because the court had authority to terminate custodianship prior to the minor's attaining the age of twenty-one, the court could also commit the minor for a determinate period.[72]

In *In re M.S.S.*,[73] the Illinois Appellate Court for the Second District held that a minor who had been adjudicated a delinquent and found to be a drug addict could be committed to the Department of Corrections. In *M.S.S.*, the trial court adjudicated the minor a delinquent, and committed him to the Department of Corrections.[74] On the same day, the court found the minor to be addicted to drugs, and placed him under two years of court supervision.[75] The minor appealed the dispositional orders, claiming that paragraph 705-2(1)(c) of the Juvenile Court Act prohibited committing an addicted minor to the Department of Corrections.[76]

The appellate court agreed with the minor's interpretation of paragraph 705-2(1)(c). The court noted, however, that the minor's dispositional order for addiction did not violate that provision. The minor's placement under court supervision fell within the permissible alternatives for disposition under paragraph 705-2(1)(c).[77] The court further stated that paragraph 705-2(1)(a)(5)[78] clearly permits the court to place delinquent minors with the Department of Corrections. In addition, the court held that paragraph 705-2(1)(a)(3) gives the court discretion to require a delinquent addicted minor to undergo treatment for substance abuse rather than placing him with the Department of Corrections.[79]

The alternative dispositional placement authorized by paragraph 705-2(1)(a)(3) becomes available only when authorized by the Alcoholism and Substance Abuse Act.[80] The Alcoholism and Sub-

72. *Id.* at 46, 503 N.E.2d at 233. The court noted that to accept the State's interpretation of paragraph 705-11(2) would unnecessarily cause a conflict with paragraph 705-8. In so interpreting 705-11(2), however, the court realized that a situation could arise in which wardship could be terminated by a court, while custodianship continued. *Id.* at 45, 503 N.E.2d at 233. Nonetheless, the court declined to express an opinion on that issue. *Id.*

73. 154 Ill. App. 3d 677, 507 N.E.2d 225 (2d Dist. 1987).

74. *Id.* at 678, 507 N.E.2d at 226.

75. *Id.* at 680, 507 N.E.2d at 226. Both dispositional orders were to run concurrently. *Id.*

76. *Id.* at 680, 507 N.E.2d at 227 (citing ILL. REV. STAT. ch. 37, para. 705-2(1)(c) (1985)).

77. *Id.*

78. *Id.* at 681, 507 N.E.2d at 227 (citing ILL. REV. STAT. ch. 37, para. 705-2(1)(a)(5) (1985)).

79. *Id.* (citing ILL. REV. STAT. ch. 37, para. 705-2(1)(a)(3) (1985)).

80. *Id.* (citing ILL. REV. STAT. ch. 111 1/2, para. 6323 (1985)).

stance Abuse Act provides that the trial court may place the minor on probation and under the supervision of the Department of Alcoholism and Substance Abuse if the court determines that treatment may rehabilitate the addicted minor.[81] In *M.S.S.*, the minor's record evidenced his lack of commitment to past substance abuse programs.[82] Therefore, the appellate court concluded that the trial court did not abuse its discretion when it ordered dispositional placement to the Department of Corrections.

C. Parental Rights

During the *Survey* year, Illinois appellate courts once again addressed the standards for termination of parental rights. In *In re T.G.*,[83] the plaintiff, the minor's mother, challenged the constitutionality of an Illinois statutory scheme providing for termination of parental rights. The plaintiff claimed that the statutory scheme was unconstitutionally broad because it deprived parents found to be unfit of residual noncustodial rights.[84]

The trial court found that the plaintiff's children had been abused and neglected, and made them wards of the court.[85] The court, however, allowed the mother to exercise her noncustodial right of visitation.[86] Subsequently, the State filed a supplemental petition claiming that the plaintiff and the putative father were unfit. The trial court found the parents to be unfit and terminated parental rights, including the plaintiff's visitation rights.[87] Following entry of the termination order, the court appointed a guardian with the power to consent to adoption.[88]

On appeal, the plaintiff contended that paragraph 705-9(2) of the Juvenile Court Act[89] and paragraph 1501(D) of the Illinois Adop-

---

81. *Id.*

82. *Id.* The trial court considered the minor's past enrollment in several substance abuse programs. *Id.* The record showed that the minor repeatedly failed to participate in or cooperate with the programs. *Id.* Therefore, the trial court concluded that further programs would have no rehabilitative effect. *Id.* at 679, 507 N.E.2d at 226.

83. 147 Ill. App. 3d 484, 498 N.E.2d 370 (3d Dist. 1986).

84. *Id.* at 487, 498 N.E.2d at 372.

85. *Id.* at 486, 498 N.E.2d at 371. The children were placed in foster care. *Id.* at 485, 498 N.E.2d at 371.

86. *Id.*

87. *Id.* at 486, 498 N.E.2d at 372. Following entry of the trial court's order terminating parental rights, the trial court granted visitation rights to the maternal grandmother. On appeal, the court denied these rights to the grandmother. *Id.* at 490, 498 N.E.2d at 375. *See infra* note 100.

88. *T.G.*, 147 Ill. App. 3d at 486, 498 N.E.2d at 372.

89. *Id.* at 487,. 498 N.E.2d at 372 (citing ILL. REV. STAT. ch. 37, para. 705-9(2) (1985)). Paragraph 705-9(2) requires that in order to appoint a guardian with the power

tion Act[90] unconstitutionally deprived parents found to be unfit of fundamental, residual non-custodial rights, including visitation. The plaintiff claimed that failure to incorporate a less restrictive alternative than complete termination of parental rights provided an unconstitutional statutory scheme.[91]

The Appellate Court for the Third District analyzed paragraph 705-9(2) of the Juvenile Court Act, and found that in order to appoint a guardian with the power to consent to adoption, a determination must be made that the parents are unfit pursuant to paragraph 1501(D) of the Illinois Adoption Act.[92] The court indicated that a court must balance the best interests of the child with the parents' right to continue in the legal status as parents.[93] The court explained that when evidence shows that the parents are unfit, parental rights yield to the best interests of the child.[94]

The court stated that once clear and convincing evidence[95] establishes unfitness, the legal status of a parent terminates.[96] The right to exercise any residual, non-custodial rights is contingent upon maintaining the legal status of a parent.[97] Additionally, a termination of parental status divests a parent of all parental rights, including visitation.[98] The court found that the trial court

---

to consent to adoption, the court must find that the best interests of the child are promoted. Before such guardian can be appointed, however, non-custodial parents must be found unfit under section 1501(D) of the Illinois Adoption Act. *Id.*

90. *T.G.*, 147 Ill. App. 3d at 487, 498 N.E.2d at 372. Paragraph 1501(D) of the Illinois Adoption Act sets out the standards for finding parents unfit. ILL. REV. STAT. ch. 40, para. 1501(D) (1985).

91. *T.G.*, 147 Ill. App. 3d at 487, 498 N.E.2d at 372. The mother claimed that a complete termination of parental rights when the parent is not unfit to exercise non-custodial rights and where such exercise would not hinder the child's best interests, demonstrates the unconstitutional broadness of the Illinois statutory scheme. *Id.*

92. *Id.* at 487, 498 N.E.2d at 373.

93. *Id.* at 488, 498 N.E.2d at 373.

94. *Id.*

95. *Id.* Under the Illinois Adoption Act, the standard of proof required for parental unfitness is clear and convincing evidence. The United States Supreme Court mandated this standard of proof as a due process requirement in Santosky v. Kramer, 455 U.S. 745 (1982). *Id.*

For Illinois cases upholding the clear and convincing evidence standard, see generally, *In re* Sebrina Enis, 145 Ill. App. 3d 753, 495 N.E.2d 1319 (2d Dist. 1986); *In re* Hrusosky, 39 Ill. App. 3d 954, 351 N.E.2d 386 (3d Dist. 1986); *In re* R.M.B., 146 Ill. App. 3d 523, 496 N.E.2d 1248 (4th Dist. 1986); *In re* Dixon, 81 Ill. App. 3d 493, 401 N.E.2d 591 (3d Dist. 1980).

96. *T.G.*, 147 Ill. App. 3d at 488, 498 N.E.2d at 373.

97. *Id.*

98. *Id.* at 489, 498 N.E.2d at 374. The Juvenile Court Act identifies reasonable visitation as part of non-custodial residual parental rights and responsibilities after a child is removed from the home by court order. ILL. REV. STAT. ch. 37, para. 701-16 (1985). The rights and responsibilities of visitation are provided in an effort to facilitate the re-

proceedings clearly and convincingly established that the plaintiff was unfit to maintain parental status.[99] Therefore, the court concluded that absent parental status, the plaintiff had no legal basis to support an exercise of non-custodial rights.[100]

Although the issue presented in *T.G.* is raised frequently, the plaintiff made the wrong claim. When a parent is found legally unfit, the best interests of the minor requires the court to terminate parental rights and prohibit further child-parent contact. In some cases, however, it may be in the best interests of the minor to maintain non-custodial ties with the parent.

Several states, for example, provide for open adoption. Open adoption allows the birth parents and adoptive parents to agree to terms regarding the type of permissable contact between the birth parents and the adopted child. Such arrangements are especially important when the child is past infancy and has maintained ongoing contact with the birth parent. Whether to implement an open adoption should be determined case-by-case. It should not be based, however, on an argument that the Illinois statutory scheme for termination of parental rights is unconstitutionally broad.

D. Right to be Heard in Juvenile Proceedings

During the *Survey* year, one appellate court case addressed the

---

turn of the child to the parents' home when the underlying conditions that necessitated removal are remedied. When, however, the ward and the parents become subject to termination proceedings under the Illinois Adoption Act, the distinction between custodial and non-custodial parental rights ceases to exist. *See* ILL. REV. STAT. ch. 40, para. 1501 (1985).

99. *T.G.*, 147 Ill. App. 3d at 489, 498 N.E.2d at 374.

100. *Id.* The court also addressed the corollary issue of whether the trial court properly awarded visitation rights to the maternal grandmother on the basis of Lingwall v. Hoener, 108 Ill. 2d 206, 483 N.E.2d 512 (1985).

In *Lingwall*, the Illinois Supreme Court held that grandparents could be granted visitation privileges when parental rights were lost as a result of divorce or subsequent adoption. *Id.* at 213, 483 N.E.2d at 515. The court in *In re* T.G., however, pointed out that the *Lingwall* decision distinguished situations in which strangers were to adopt the children. *T.G.*, 147 Ill. App. 3d at 490, 498 N.E.2d at 374. When a stranger may adopt children, all past ties must be severed to provide an incentive for adoption and the opportunity to create new stable family relationships. *Id.* Therefore, when parental rights are terminated, a presumption arises that terminating any grandparental visitation rights serves the best interests of the child. *Id.* Unless clear and convincing evidence establishes otherwise, policy considerations in favor of adoption outweigh a grant of visitation rights when parental rights have been terminated. *Id.*

Therefore, the court in *T.G.* distinguished *Lingwall* and reversed the awarding of visitation rights to the maternal grandmother. *Id.* The court noted that parental rights had been terminated, and a guardian had been appointed with the power to consent to adoption. *Id.* Furthermore, the record revealed no clear and convincing evidence that continuance of the grandmother's visitation rights served the best interests of the child. *Id.*

rights of relatives and non-relatives to participate and be heard in a dependency proceeding.[101] In *In re Winks*, the State filed a petition alleging that six minor children were dependent because they were without a parent, guardian, or legal custodian.[102] The six children resided with the appellants, Bette and Charles Winks, who were named as original respondents.[103] On the State's motion, the court ordered the Winkses stricken from the petition.[104] The trial court then adjudged the minors dependent and entered an order making them wards of the court.[105]

On appeal, the Appellate Court for the Fourth District reviewed only the order striking the Winkses from the petition. The court noted that the Juvenile Court Act did not clearly delineate which parties were entitled to participate in dependency proceedings.[106] Paragraph 704-1(2) of the Juvenile Court Act requires that various persons, including those who have custody over the minor, be named as respondents.[107] The Winkses argued that because they

101. *In re* Winks, 150 Ill. App. 3d 657, 502 N.E.2d 35 (4th Dist. 1986).

102. *Id.* at 658, 502 N.E.2d at 36 (citing ILL. REV. STAT. ch. 37, para. 702-5(1)(a) (1985)). Those who are dependent include any minor under eighteen years of age who is without a parent, guardian, or legal custodian, or without proper care because of physical or mental disability of a parent, guardian, or legal custodian. ILL. REV. STAT. ch. 37, para. 702-5 (1985). Also included as dependent are minors of parents who wish to be relieved of all parental rights and who consent to appointment of guardian with the power to consent to adoption. *Id.* Minors adjudged to be dependent may be removed from the custody of the parents, and placed under legal custody, guardianship or court wardship. ILL. REV. STAT. ch. 37, para. 705-7 (1985).

103. *Winks*, 150 Ill App. 3d at 658, 502 N.E.2d at 36. The minor children were brought into the country and left with the appellants. The Winkses were named as respondents on the original petition under the designation of relatives. The minor children, however, bore no relation to the Winkses by blood or adoption. *Id.*

104. *Id.*

105. *Id.* at 659, 502 N.E.2d at 36. The Winkses appealed both the order striking them from the case and the adjudicatory order finding the minors dependent. *Id.* at 659, 502 N.E.2d at 37. The court, however, had no jurisdiction to review the adjudicatory order of dependency because that order was not yet final as no dispositional order had yet been rendered. *Id.* at 660, 502 N.E.2d at 37. An interlocutory appeal was improper also because the Winkses' notice to appeal was filed before the dispositional order. *Id.* The court stated that adjudicatory orders are appealable after ninety days if no dispositional order has been entered. *Id.* Because the Winkses filed their appeal within the ninety days and prior to the dispositional order, the notice of appeal was a nullity. *Id.*

For Illinois cases discussing the appropriate timeliness of an interlocutory appeal in juvenile proceedings, see generally, *In re* E.L., 152 Ill. App. 3d 25, 504 N.E.2d 157 (1st Dist. 1987); *In re* J.M., 151 Ill. App. 3d 1037, 503 N.E.2d 1167 (2d Dist. 1987); *In re* Gonder, 149 Ill. App. 3d 627, 500 N.E.2d 1004 (4th Dist. 1986); *In re* Hershberger, 132 Ill. App. 3d 332, 477 N.E.2d 80 (4th Dist. 1985); *In re* Johnson, 102 Ill. App. 3d 1005, 429 N.E.2d 1364 (1st Dist. 1981); *In re* Smith, 80 Ill. App. 3d 380, 399 N.E.2d 701 (4th Dist. 1980).

106. *Id.* at 661, 502 N.E.2d at 38.

107. *Id.* at 662, 502 N.E.2d at 38 (citing ILL. REV. STAT. ch. 37, para. 704-1(2)

had physical custody over the minors, they should not have been stricken from the case, but rather had a right to be present and heard.[108]

The appellate court agreed that paragraph 704-1(2) entitled the Winkses to be named as respondents. The court, however, concluded that they were not entitled to the right to be heard and to be present.[109] The court stated that persons with merely physical custody are named as respondents only to ensure that they bring the minor before the court, not to provide them with an opportunity to participate in the hearing.[110] Therefore, the court emphasized that being a respondent does not necessarily entitle one to the right to be heard.[111]

The court also noted that only parents, guardians, legal custodians, or responsible relatives have the right to be heard as provided in paragraph 701-20(1) of the Juvenile Court Act.[112] In addition, paragraph 701-20(2) provides that appointed foster parents also have the right to be heard, but are not parties to the proceeding.[113] Therefore, the court concluded that only parties named as respondents under paragraph 704-1(2) who meet the further qualifications in paragraph 701 20(1) or 701-20(2) have the right to be heard.[114]

The court found that the Winkses did not fall within any of the categories set forth in paragraphs 701-20(1) or 701-20(2).[115] The Winkses were not the minors' parents.[116] Nor did the Winkses qualify as guardians or legal custodians because such status only arises by a grant of authority.[117] The Winkses also were not related to any of the children and thus could not qualify as responsible

(1985)). Paragraph 704-1(2) requires a petition initiating a juvenile proceeding to include the legal guardian or the person or persons having custody or control of the minor, or of the nearest known relative, if no parent or guardian can be found. ILL. REV. STAT. ch. 37, para. 704-1(2)(1985).

108. *Winks*, 150 Ill. App. 3d at 662, 502 N.E.2d at 38.

109. *Id.* at 663, 502 N.E.2d at 40.

110. *Id.* at 662, 502 N.E.2d at 39.

111. *Id.*

112. *Id.* at 661, 502 N.E.2d at 38 (citing ILL. REV. STAT. ch. 37, para. 701-20(1) (1985)).

113. *Id.* (citing ILL. REV. STAT. ch. 37, para. 701-20(2) (1985)).

114. *Id.* at 663, 502 N.E.2d at 39.

115. *Id.*

116. *Id.* at 661, 502 N.E.2d at 38. The Winkses also contended that they should qualify as standing in *loco parentis* to the children. The court, however, rejected this argument because of the short duration of the relationship between the Winkses and the six minor children. *Id.*

117. *Id.*

relatives.[118] Finally, the Winkses were not appointed foster parents.[119] Therefore, the court concluded that the Winkses did not have the right to be heard, even though they qualified as respondents.[120] Thus, the court concluded that no prejudice resulted to the Winkses by striking them from the petition.[121]

The precedential value of this case may be limited because of its unique fact pattern. The children in *Winks* were brought into the country and left with the appellants without the Winkses obtaining a court order declaring them legal custodians of the children. In addition, the evidence indicated that the manner by which the Winkses brought the children into the country was quite secretive. The court suspected that the Winkses arranged for the children to be smuggled into the country in order to adopt them.

The Juvenile Court Act is ambiguous with regard to who is entitled to participate in a dependency proceeding. The Juvenile Court Act does suggest, however, that a limited group of individuals have a statutory right to be present and participate in juvenile adjudications. When circumstances indicate that it would be beneficial for the child's custodian to be heard, the limited nature of the law does not forbid a court from allowing the party to be heard. The law, however, does not require that conclusion; the decision may be left to judicial discretion.

E. Sufficiency of Evidence in Juvenile Proceedings

1. Abuse and Neglect Proceedings

Paragraph 704-6(4)(c) of the Juvenile Court Act provides that prior statements by a minor relating to allegations of abuse or neglect are admissible in evidence.[122] Such statements alone, however, cannot support a finding of abuse or neglect unless they are

118. *Id.*

119. *Id.*

120. *Id.* at 663, 502 N.E.2d at 40.

121. *Id.*

122. ILL. REV. STAT. ch. 37, para. 704-6(4)(c) (1985). It should be noted that paragraph 704-6(4)(c) requires a preponderance of the evidence as the standard of proof, the same standard as required in civil cases. *In re* J.H., 153 Ill. App. 3d 616, 505 N.E.2d 1360 (2d Dist. 1987). In *J.H.*, the appellate court affirmed the trial court's dismissal of the State's petition alleging abuse on the grounds that the standard of proof necessary to prove abuse had not been met. *Id.* at 631, 505 N.E.2d at 1369. The State based its case on the statements of the minor herself, which were neither corroborated nor subject to cross-examination. *Id.* at 632, 505 N.E.2d at 1370. Because the trial court's findings were not against the manifest weight of the evidence, the reviewing court affirmed. *Id.* at 633, 505 N.E.2d at 1371.

corroborated and the minor is subject to cross-examination.[123] Absent the foregoing legislation, the previous out-of-court statements would be inadmissible as hearsay. Consequently, challenges to the sufficiency of the evidence supporting an order of abuse or neglect often arise. The question usually hinges upon whether the corroboration requirements of paragraph 704-6(4)(c) have been met.[124]

During the *Survey* year, the Illinois Appellate Court for the Fourth District addressed the question of whether the corroboration requirement violated the right to confrontation afforded by the sixth amendment.[125] In *In re K.L.M.*,[126] the court adjudicated a minor as neglected within the meaning of paragraph 702-4 of the Juvenile Court Act.[127] The court entered a dispositional order making the minor a ward of the court and placing her under the guardianship of the Department of Children and Family Services.[128] Admission of a caseworker's and psychotherapist's hearsay testimony that corroborated the minor's alleged complaints about the custodial father supported the finding of neglect.[129]

On appeal, the minor's custodial father contended that admission of the caseworker's and psychotherapist's testimony violated his constitutional right to confrontation.[130] The court responded by stating that the sixth amendment affords the right to confrontation in all criminal proceedings.[131] The court also opined that although the right to confrontation may extend to purely civil proceedings,[132] those confrontation rights do not apply as extensively, particularly in cases involving juvenile proceedings.[133]

The court then examined the relationship between the hearsay rules and confrontation clause in order to determine whether the

123. ILL. REV. STAT. ch. 37, para. 704-6(4)(c) (1985).

124. For Illinois cases challenging the sufficiency of the evidence supporting a finding of abuse or neglect, see generally *In re* J.H., 153 Ill. App. 3d 616, 505 N.E.2d 1360 (2d Dist. 1987); *In re* Custody of Brunken, 139 Ill. App. 3d 232, 487 N.E.2d 397 (5th dist. 1985).

125. *In re* K.L.M., 146 Ill. App. 3d 489, 496 N.E.2d 1262 (4th Dist. 1986) (construing U.S. CONST. amend. VI).

126. 146 Ill. App. 3d 489, 496 N.E.2d 1262 (4th Dist. 1986).

127. *Id.* at 490, 496 N.E.2d at 1263 (citing ILL. REV. STAT. ch. 37, para. 702-4 (1983)).

128. *Id.*

129. *Id.* at 491, 496 N.E.2d at 1263. The minor, a four year old, was not permitted to testify because of her tender age. *Id.* at 497, 496 N.E.2d at 1267.

130. *Id.* at 491, 496 N.E.2d at 1263. The testimony was admitted pursuant to paragraph 704-6(4)(c). The respondent contended also that adjudication of neglect was against the manifest weight of the evidence. *Id.*

131. *Id.* at 494, 496 N.E.2d at 1266.

132. *Id.* at 495, 496 N.E.2d at 1266.

133. *Id.*

respondent had been afforded due process. The court cited the United States Supreme Court cases of *Dutton v. Evans*[134] and *Ohio v. Roberts*[135] to bolster its position that the confrontation clause and due process requirements had been satisfied. The court maintained that these cases require a search for trustworthiness and reliability, when out-of-court statements are admitted pursuant to a hearsay exception.[136] The court then stated that in Illinois, hearsay exceptions should comply with the confrontation requirements enunciated in those opinions.[137]

The court noted that under *Dutton* and *Roberts*, the confrontation clause is satisfied when a hearsay declarant testifies at trial and is subject to cross-examination.[138] If the hearsay declarant is not present, but the declarant's unavailability is shown, the statement may still be admissible when there is an indicia of reliability and a satisfactory basis for evaluating the truth of the prior statement.[139]

The court then held that paragraph 704-6(4)(c) afforded the respondent due process by "coming close enough" to the confrontation clause requirements enunciated in *Dutton* and *Roberts*.[140] The court, however, narrowed its holding to apply only to the facts of *K.L.M.*.[141] The court reasoned that in juvenile proceedings involving young abused or neglected minors, the statements of the minor were likely to be reliable, and the interests of justice would be best promoted by allowing the evidence to be introduced.[142]

The court stated that many cases of abuse could not be proven without admitting hearsay testimony, and that the Illinois legislature must have considered this in enacting paragraph 704-6(4)(c).[143] The court also recognized that another underlying policy of paragraph 704-6(4)(c) concerns protecting young minors from the emotional trauma of testifying in abuse or neglect proceedings.[144] In addition, because paragraph 704-6(4)(c) applies only to such a particular kind of civil case, the confrontation rights encompassed by due process applied less strictly than in criminal

134. 400 U.S. 74 (1970).
135. 448 U.S. 56 (1980).
136. *K.L.M.*, 146 Ill. App. 3d at 495, 496 N.E.2d at 1266.
137. *Id.* at 496, 496 N.E.2d at 1267.
138. *Id.*
139. *Id.*
140. *Id.* at 497, 496 N.E.2d at 1268.
141. *Id.* The court narrowed its holding to the particular facts of *K.L.M.*, noting that other circumstances would require a case-by-case determination of due process. *Id.*
142. *Id.* at 497, 496 N.E.2d at 1267.
143. *Id.*
144. *Id.*

cases.[145]

The court then examined the evidence in light of the policy behind paragraph 704-6(4)(c). The court concluded that the trier of fact had a sufficient evidentiary basis upon which to weigh the truth and reliability of the minor declarant's out-of-court statements, even absent an opportunity for the respondent to cross-examine the minor.[146] The testimony of the psychotherapist corroborated the testimony of the caseworker, thereby providing an adequate basis from which to weigh the reliability of the minor's out-of-court statements. The court then found that a combination of this testimony and other circumstantial evidence constituted sufficient corroboration of the hearsay evidence admitted regarding the minor's out-of-court statements. Thus, the court concluded that this corroboration adequately complied with the confrontation requirements of *Dutton* and *Roberts*.[147]

2. Delinquency Proceedings

A delinquency proceeding arising under the Juvenile Court Act is primarily criminal in nature.[148] Therefore, the applicable standard of proof is beyond a reasonable doubt.[149] This conclusion was discussed in *In re B.J.S.*[150] In that case, the State filed a petition for adjudication of delinquency and wardship, charging the minor with criminal sexual abuse and assault. After the trial, the court entered an order adjudicating the minor delinquent and a ward of the State.[151] The minor appealed, claiming that the evidence presented failed to prove his guilt beyond a reasonable doubt.[152] The minor contended that the evidence in support of the conviction was uncorroborated and otherwise not clear and convincing.[153]

The appellate court agreed with the minor's argument. The

145. *Id.* at 497, 496 N.E.2d at 1268.

146. *Id.* at 493, 496 N.E.2d at 1265. The minor's tender age sufficiently justified her unavailability to testify. *Id.* at 497, 496 N.E.2d at 1267.

147. *Id.* at 497, 496 N.E.2d at 1268.

148. *In re* B.J.S., 151 Ill. App. 3d 1023, 1026, 503 N.E.2d 1198, 1200 (4th Dist. 1987).

149. *Id.* at 1028, 503 N.E.2d at 1201.

150. 151 Ill. App. 3d 1023, 503 N.E.2d 1198 (1987).

151. *Id.* at 1024, 503 N.E.2d at 1198. The minor respondent was twelve years old and the incident involved his three-year-old stepsister. *Id.* The criminal sexual assault charge was dismissed and the minor was found guilty of criminal sexual abuse. *Id.* The dispositional order sentenced the minor to six months probation. *Id.*

152. *Id.*

153. *Id.*

court stated that if a defendant denies the charge of criminal sexual abuse, the victim's testimony must be corroborated, or must be clear and convincing.[154] Corroborating evidence can include an eyewitness account, confession or admission by the defendant, prompt reporting of the incidents by the victim, or medical testimony supporting the allegation of sexual abuse.[155]

In *B.J.S.*, the State introduced evidence of two alleged incidents of abuse.[156] One incident allegedly took place in a garage. The second incident occured in the victim's bedroom. The appellate court could not determine from the record which incident was alleged in support of the sexual abuse allegation.[157] On appeal, the State admitted the insufficiency of the evidence to corroborate the allegations of sexual abuse in one of the incidents.[158] The State, however, argued that the allegations of the second incident sufficiently corroborated the allegations of the first incident.[159]

The appellate court rejected the State's argument noting that the trial court specifically referred to both incidents as corroborating the charges of sexual abuse. The court also noted that the record could not demonstrate that either incident alone was sufficiently corroborated. Furthermore, the court found that none of the evidence established that there was any physical contact directly linking the respondent to the allegations charged. Therefore, the appellate court concluded that reasonable doubt remained. Accordingly, the court reversed the conviction and the delinquency adjudication.[160]

---

154. *Id.* at 1026, 503 N.E.2d at 1200 (citing People v. Leamons, 127 Ill. App. 3d 1056, 469 N.E.2d 1137 (4th Dist. 1984)).

155. *Id.* at 1027, 503 N.E.2d at 1200.

156. *Id.* at 1026, 503 N.E.2d at 1199. One incident allegedly took place in a garage. The second incident allegedly occured in the victim's bedroom. The witness, the respondent's fourteen year-old stepsister, Jody, testified that sometime during 1986 but prior to May 10, 1986, she saw the respondent and the victim in the garage together. Apparently the respondent was zipping his pants and the victim was pulling up her pants. They were not, however, seen touching. *Id.* at 1025, 503 N.E.2d at 1199.

The second incident took place on May 10, 1986. Jody testified that she ran to the victim's bedroom after hearing her scream. Jody testified that the victim told her that the respondent had been in her room and touched her in the genital area. Jody testified, however, that she did not see the respondent in the victim's bedroom. *Id.* at 1024, 503 N.E.2d at 1199.

157. *Id.* at 1027, 503 N.E.2d at 1200.

158. *Id.*

159. *Id.* at 1027, 503 N.E.2d at 1201.

160. *Id.* For an Illinois case during the *Survey* year that held the evidence sufficient to corroborate allegations of criminal sexual abuse, see generally *In re* E.S., 145 Ill. App. 3d 906, 495 N.E.2d 1334 (5th Dist. 1987).

III. LEGISLATION

A. Public Act 84-1475: Commitment to the Department of Corrections

Public Act 84-1475 became effective February 5, 1987.[161] It amends paragraph 705-10 of the Juvenile Court Act which governs commitment of delinquents to the Department of Corrections. As amended, paragraph 705-10(2) now provides that commitment of a delinquent to the Department of Corrections must be for an indeterminate term.[162] The commitment automatically terminates upon the delinquent's attaining the age of twenty-one, unless the delinquent is discharged sooner from parole, or custodianship is terminated otherwise as provided by the Juvenile Court Act or law.[163]

The addition of paragraph 705-10(2) appears to be in response to the Illinois Supreme Court's decision in *People v. S.L.C.*.[164] The decision in *S.L.C.* allowed original dispositional orders committing a delinquent to the Department of Corrections to be set for a determinate period of time.[165] After the recent modification of the Juvenile Court Act, however, the decision in *S.L.C.* no longer controls.

B. Public Act 85-985: Family Preservation

Public Act 85-985[166] amends provisions of the Abused and Neglected Child Reporting Act (the "Reporting Act"),[167] the Department of Children and Family Services Act, (the "DCFS Act"),[168] and the Juvenile Court Act.[169] Public Act 85-985 became effective December 22, 1987.[170] The purposes of the amendments include: preventing the unnecessary removal of children from their families; facilitating the reunification of children in foster care with their families; and providing support for adoptive families.

Public Act 85-985 amends paragraphs 2057.4 and 2058.2 of the

161. ILL. REV. STAT. ch. 37, para. 705-10(2).

162. *Id.* The act, as amended, does not eliminate any prior provision, and paragraphs 705-10 (2), (3), and (4) have been recodified as 705-10 (3), (4), and (5) respectively. *Id.*

163. *Id.*

164. 115 Ill. 2d 33, 503 N.E.2d 228 (1986).

165. *See supra* notes 53-72 and accompanying text.

166. 1987 Ill. Legis. Serv. 85-985 (West).

167. ILL. REV. STAT. ch. 23, para. 2051 (1985).

168. ILL. REV. STAT. ch. 23, paras. 5001-41 (1985).

169. ILL. REV. STAT. ch. 37, paras. 701-1 to 708-4 (1985).

170. 1987 Ill. Legis. Serv. 85-985 (West). The bill was certified December 22, 1987, after Governor Thompson amendatorily vetoed the bill and the House and Senate approved his amendatory veto. *Id.*

Reporting Act[171] to require that the Department of Children and Family Services (the "DCFS") provide family preservation services.[172] The Reporting Act, as amended, mandates that the DCFS notify children and families of the DCFS's responsibility to offer and provide family preservation services, as identified in the service plan.[173] In addition, the amendments to the Reporting Act further require that the Child Protective Service Unit[174] consider any benefits Family Preservation Services may provide in determining the necessity for removal of a child from his or her family.

Public Act 85-985 also amends paragraphs 5005 and 5006a of the DCFS Act[175] by providing for family preservation services for families whose children have been placed in substitute care, post-adoption families, and families whose children are at risk of placement. The DCFS Act, as amended, also creates an emergency assistance fund to allow the DCFS to provide financial aid to families. This fund may be used when such assistance is not available through other public or private sources and the assistance is deemed necessary to prevent dissolution of the family unit or to reunite families who have been separated because of child abuse or neglect.

The amendments to paragraph 703-6 of the Juvenile Court Act[176] require the court to receive documentation by the DCFS or the probation department of the reasonable efforts that were made to prevent or eliminate placement. Paragraph 703-6, as amended, further requires the court to document its findings regarding the nature of the services offered and efforts made to prevent placement.

The amendments effected by Public Act 85-985 are a response, in part, to Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980.[177] That law requires the court to find that

171. ILL. REV. STAT. ch. 23, paras. 2057.4 and 2058.2 (1985).

172. 1987 Ill. Legis. Serv. 85-985 (West). Family preservation services include all services designed to prevent the placement of children in substitute care. The services are also designed to reunite previously placed children with their families, when reunification is an appropriate goal; or, in the alternative, to help maintain adoptive placement. Public Act 85-985 further requires that the DCFS phase in such services over a five year period. *Id.*

173. ILL. REV. STAT. ch. 23, para. 2058.2 (1985). A service plan is a non-legal written agreement between the agency and the client identifying the services to be provided by the agency, and the client's responsibility regarding those services. *Id.*

174. ILL. REV. STAT. ch. 23, para. 2053 (1985). The Child Protective Service Unit is a subdivision within the Department of Children and Family services. *Id.*

175. ILL. REV. STAT. ch. 23, paras. 5005 and 5006a (1985).

176. ILL. REV. STAT. ch. 37, para. 703-6 (1985).

177. 94 Stat. 500 (1980)(codified at 42 U.S.C. §§ 670-676 (1982)).

reasonable efforts[178] have been made to prevent removing a child from the family home or to facilitate returning the child to the family home. Failure to meet the reasonable efforts requirement results in lost federal reimbursement to the state for the cost of the child's care.

Therefore, Public Act 85-985 follows the reasonable efforts requirement of federal law in an effort to pressure the agency to develop or provide needed resources both for the welfare of families and to avoid the harsh repercussion of losing federal funds. Public Act 85-985 sets forth services that must be made available to show reasonable efforts. The amendatory veto of the bill by Governor Thompson, however, removed the entitlement language from the bill, and no monies have been appropriated to help enact the law. Although many of the provisions can be implemented without additional funding, the resources provision of the law cannot be adequately developed. DCFS is still in need of additional funds to implement family preservation services.

IV. CONCLUSION

During the *Survey* year, the cases in the juvenile law area highlighted a variety of issues. Like last year, the Illinois courts often focused on the issue of notice in juvenile proceedings and attempted to clarify the intent of legislation drafters on notice requirements. The appellate court affirmed a termination of parental rights, finding that the right of a parent to exercise residual noncustodial rights after termination is not fundamental, and that the Illinois statutory scheme that provides for termination is not unconstitutionally broad. The court also narrowly interpreted provisions in the Juvenile Court Act so as to limit the number of parties who must be allowed to participate and be heard in a dependency

178. *Id.* "Reasonable efforts" is not defined by federal or state statutes. The reasonable efforts inquiry requires that before removing a child for his or her safety, the agency worker must consider whether there is any assistance —cash payments, services in lieu of cash or social support services— that would likely enable the child to remain safely at home. When feasible, the agency is to provide the assistance or be required by the court to meet a substantial burden of justifying the failure to provide such assistance. Even if the court finds that reasonable efforts have not been made, however, the court may still determine that the child cannot be safely allowed to remain or be returned to the family home.

For factors to consider in determining whether "reasonable efforts" were made, see NATIONAL COUNCIL ON JUVENILE AND FAMILY COURT JUDGES, CHILD WELFARE LEAGUE OF AMERICA, YOUTH LAW CENTER; NATIONAL CENTER FOR YOUTH LAW, MAKING REASONABLE EFFORTS: STEPS FOR KEEPING FAMILIES TOGETHER; and D. Ratterman, G.D. Dodson, and M. Hardin, REASONABLE EFFORTS TO PREVENT FOSTER PLACEMENT: A GUIDE TO IMPLEMENTATION (1987).

proceeding. Also, during the *Survey* year, Illinois case law on hearsay continued to parallel the growing trend throughout the country. This trend allows exceptions to the hearsay rule in dependency proceedings so long as certain protections are provided.

This *Survey* year, the legislature addressed the issue of determinate sentencing and thus established greater protections for minors. Judges can no longer sentence juveniles to the Department of Corrections for specified terms. Currently, the Department of Corrections also is involved in deciding the length of incarceration.

The legislature also passed a bill to provide greater protections for children in the child welfare system. By statutory amendment, the DCFS is required to provide family preservation services. In addition, the Juvenile Court must receive documentation of reasonable efforts made to provide those family services in order to prevent unnecessary removal and to facilitate reunification of a child and family.

In sum, the trend in Illinois continues to maintain a strict approach toward juvenile offenders. The courts and the legislature also continue to show a more protective approach toward minors in the welfare system and juvenile victims of abuse and neglect.