COURT OF APPEALS
DECISION
DATED AND FILED

October 16, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP252 **Cir. Ct. No. 2013TP19**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE TERMINATION OF PARENTAL RIGHTS TO J. M.,
A PERSON UNDER THE AGE OF 18:

LA CROSSE COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

V.

C. J. T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: DALE T. PASELL, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.[1] C.J.T. appeals a circuit court order terminating her parental rights to her son, J.M. C.J.T. contends that she was denied the effective assistance of counsel on five grounds, relating to counsel's failure to object to the admission of certain testimony and the GAL's improper invocation of the best interests of the child standard during her opening statements and closing arguments. C.J.T. also contends that the trial court erred in admitting prejudicial hearsay evidence and that the GAL had an impermissible conflict of interest. For the reasons explained below, we reject C.J.T.'s arguments and affirm.

BACKGROUND

¶2 C.J.T. is the mother of J.M. In 2010, J.M. was removed from his parents' care and the circuit court found J.M. to be a child in need of protective services (CHIPS). A dispositional hearing was held, at which the circuit court informed the parents of the potential grounds for termination of their parental rights and of the conditions necessary for J.M. to be returned to the parents' home. J.M. has been placed outside of the parental home since June 28, 2011.

¶3 In 2013, Bobbi Goodman, a social worker with the La Crosse County Department of Health and Human Services (the Department), filed a petition seeking to terminate C.J.T.'s parental rights on the grounds that J.M. "is in continuing need of protection or services pursuant to [WIS. STAT.]

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

§ 48.415(2)(a)."[2] C.J.T. contested the petition and the case proceeded to a jury trial in 2014. At the close of evidence, the jury found that grounds existed to terminate C.J.T.'s parental rights. A disposition hearing was subsequently held and the court entered an order terminating C.J.T.'s parental rights to J.M.

¶4 C.J.T. filed a motion for a new trial on two grounds: (1) ineffective assistance of counsel for her attorney's failure to object to the admission of certain evidence and to statements the GAL made during her opening statements and closing arguments; and, (2) the trial court erred in admitting prejudicial hearsay. Approximately two months later, C.J.T. filed a motion with this court to supplement her pending postdisposition motion to include an additional ground for her motion for a new trial: that the GAL had a conflict of interest. We entered an order allowing C.J.T. to supplement her motion accordingly.

¶5 A hearing was held on C.J.T.'s postdisposition motions and the trial court issued a written decision denying them.[3] With regard to the claim of ineffective assistance of counsel, the court found that counsel's performance was either not deficient, not prejudicial, or both with regard to the testimony provided by the social workers and the statements and arguments made by the GAL during her opening and closing. With regard to the prejudicial hearsay issue, the trial court found the evidence was properly admitted, and, in the alternative, any error admitting the evidence was harmless. With regard to the alleged conflict of

[2] The Department also filed a petition to terminate J.M.'s father's parental rights. Initially, the father challenged the petition, but ultimately consented to the termination of his rights. This appeal does not involve the father.

[3] The Hon. Dale T. Pasell presided over the termination of parental rights proceedings throughout the grounds and dispositional phases of the trial. On remand, the Hon. Candice C.M. Tlustosch presided over the postdispositional proceedings.

interest issue, the court found there was no conflict on the basis that C.J.T. was not prejudiced by the GAL's representation of the attorney for the Department and the best interests of J.M. C.J.T. appeals.

DISCUSSION

¶6 On appeal, C.J.T. renews her arguments made in the circuit court: (1) counsel provided ineffective assistance by failing to object to testimony by two social workers, and statements made by the GAL during her opening statements and closing arguments, urging the jury to apply the best interest of the child standard in its deliberations and allegedly violating the "golden rule"; (2) the trial court erred in admitting prejudicial hearsay evidence about her drug use; and (3) the GAL had a conflict of interest because the GAL simultaneously represented J.M.'s best interests in this case, and the Department's trial counsel in an unrelated personal injury matter. We address and reject each argument in turn.

I. Ineffective Assistance of Counsel Claim

¶7 To establish an ineffective assistance of counsel claim, C.J.T. must satisfy a two-part test. First, she must show that her "counsel's performance was deficient." ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Second, she must prove that the deficient performance prejudiced her ***Id.*** If C.J.T. fails to meet either the deficient performance or prejudice component of the test, we need not address the other component. *See* ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996).

¶8 Assessing deficient performance means determining whether counsel's performance was objectively reasonable. ***State v. Kimbrough***, 2001 WI App 138, ¶¶31-35, 246 Wis. 2d 648, 630 N.W.2d 752. Strategic decisions "made

after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." ***State v. Balliette***, 2011 WI 79, ¶26, 336 Wis. 2d 358, 805 N.W.2d 334 (quoting ***Strickland***, 466 U.S. at 690). If the court finds deficient performance, the court must determine wither the deficient performance prejudiced the defendant. Prejudice occurs when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***State v. Thiel***, 2003 WI 111 ¶20, 264 Wis. 2d 571, 665 N.W.2d 305 (quoted source omitted).

¶9 A claim of ineffective assistance of counsel presents a mixed question of law and fact. ***State v. Carter***, 2010 WI 40, ¶19, 324 Wis. 2d 640, 782 N.W.2d 695. Findings of fact include "the circumstances of the case and the counsel's conduct and strategy." ***State v. Knight***, 168 Wis. 2d 509, 514 n.2, 484 N.W.2d 540 (1992). This court upholds the circuit court's findings of fact unless clearly erroneous. ***Id.*** Whether counsel's performance satisfies the constitutional standard for ineffective assistance of counsel is a question of law, which we review de novo. ***Id.***

¶10 As we indicated, C.J.T. contends that her trial counsel did not provide effective assistance because he failed to object to the admission of certain testimony provided by two social workers and statements made by the GAL during her opening and closing arguments encouraging the jury to apply the best interests of the child standard in deciding whether grounds existed to terminate C.J.T.'s parental rights to J.M. We address and reject each argument in turn.

¶11 C.J.T. first argues that her trial counsel should have objected to social worker Goodman's testimony that the Department is required to pursue

termination of parental rights if a child has been placed out of the home for fifteen of the last twenty-two months and reunification has not happened. She argues that the evidence was "misleading" because it "tend[ed] to suggest a statutory scheme mandated the termination of C.J.T.'s parental rights in this case." We reject this argument for two reasons.

¶12 First, the total of C.J.T.'s argument on this topic is comprised of conclusory, one-sentence, and undeveloped arguments. For instance, she argues:

> Trial counsel did not object to this evidence. He did not have a strategic reason for having not object[ed] to the evidence. The Department's statutory obligation to seek a termination of parental rights petition was not as black and white as portrayed by the testimony of social worker Goodman.

The rest of C.J.T.'s arguments on this topic are similarly undeveloped and truncated. We can end our analysis on this topic here because we need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). However, we go on, albeit briefly, to note that, when read in context, it is obvious that Goodman was simply providing the jury with helpful background on the workings and procedures of CHIPS and termination of parental rights cases, and a brief summation of the 1997 Adoption and Safe Families Act. We say nothing further on this topic.

¶13 With regard to Goodman's testimony that the Department's referral for the filing of the petition in this case was "at the court's directive," this argument is also undeveloped and conclusory. In any event, C.J.T. takes this testimony out of context. At the time that Goodman made this statement during her testimony, she was explaining that she had gone on maternity leave and that

the social worker who assumed C.J.T.'s file was keeping Goodman abreast of developments in the case. Goodman testified as follows:

> Krista Rasque actually contacted me at home while I was on maternity leave and informed me that there had been another court hearing to update the Court on how things were going and the concerns, and the Court had directed that a petition to file for the termination of parental rights happen, and so Krista, not being familiar with the case the way I was, was contacting me for information so that she could make that referral at the Court's directive.

¶14 C.J.T.'s suggestion that Goodman's testimony "allowed the jury to infer a trial court had already decided the termination of parental rights was in the best interest of the child" and that it "had the potential impact of sending a message to the jury its role was of limited importance in deciding an issue[] already resolved," is absurd. These assertions are speculative and unsupported by the record. In any event, C.J.T. does not explain why a jury would infer from this testimony that the court had already determined that, without a trial, termination of C.J.T.'s parental rights was in J.M.'s best interest.

¶15 C.J.T. next argues that her trial counsel was ineffective by failing to object to Goodman's testimony that the Department had made "reasonable efforts" in providing services to C.J.T. during permanency plan reviews. Goodman testified to this effect three times during the trial. In all three instances, Goodman was asked whether the court in the permanency plan hearings had made findings that the Department had made "reasonable efforts" to achieve the goal of the permanency plan.[4] C.J.T. argues that the evidence was irrelevant; counsel lacked

[4] In her reply brief, C.J.T. objects to an additional statement regarding the Department's "reasonable efforts," this time made by the attorney for the Department during closing arguments. An issue is deemed forfeited if it is not raised in the appellant's brief-in-chief. ***Olivarez v. Unitrin Prop. & Cas. Ins. Co.***, 2006 WI App 189, ¶34, 296 Wis. 2d 337, 723 N.W.2d 131. (continued)

a strategic reason for not objecting to this testimony; the evidence was "misleading and disingenuously suggested the trial court had already determined that the Department had been reasonable in providing the services ordered by the court in separate proceedings"; and that the element the Department was obligated to establish was not in serious dispute.

¶16 Putting aside for the moment that C.J.T.'s arguments are once again conclusory and substantially undeveloped, C.J.T. takes Goodman's testimony out of context. Goodman's challenged testimony was offered while explaining to the jury the procedural history of the case. We do not read Goodman's testimony on this topic as an effort by the Department to avoid its obligation to prove to the jury that the Department had reasonably met its obligation to provide necessary services to C.J.T. as part of its burden in proving that grounds existed to terminate C.J.T.'s parental rights to J.M.

¶17 In addition, the written permanency plans in this case were admitted into evidence and were therefore available to the jurors for their inspection. In short, the jurors would have learned from the documentary evidence that the court found in prior post-CHIPS proceedings that the Department had made reasonable efforts "to achieve the goal of the permanency plan." We fail to see how counsel was ineffective for not objecting to this part of Goodman's testimony.

¶18 C.J.T. next argues that trial counsel was ineffective for failing to object to Goodman's testimony regarding thirteen previous referrals made to the Department regarding her parenting of her other children. C.J.T. argues that

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C.J.T. makes this argument for the first time in her reply brief and therefore this argument is forfeited.

Goodman's testimony about the thirteen referrals was "misleading" since "[i]t suggested C.J.T. was such a bad parent that the Department had to intervene no less than 13 times ... *before [J.M.] was even born*!" This argument is easily rejected.

¶19 C.J.T.'s argument misses the mark in several ways. First, as with her earlier arguments, her arguments on this topic are conclusory and not fully developed. Second, the only argument, albeit undeveloped, C.J.T. makes in support of her assertion that the evidence was misleading—that the evidence suggested C.J.T. was an inadequate parent even prior to J.M.'s birth—says nothing more than the obvious. The record is replete with evidence challenging the adequacy of C.J.T.'s parenting of J.M. In the context of the entire record, Goodman's brief testimony that thirteen referrals were made to the Department regarding C.J.T.'s parenting prior to J.M.'s birth is merely a drop in the already full bucket of evidence of C.J.T.'s inadequate parenting.

¶20 In addition, in denying C.J.T.'s motion in limine, the trial court correctly found that evidence of a parent's conduct prior to the filing of a termination of parental rights petition may be relevant to predicting whether there was a substantial likelihood that C.J.T. would meet the conditions established for the safe return of J.M. to her home within the following nine-month period. *See* ***La Crosse Cnty. DHS v. Tara P.***, 2002 WI App 84, ¶10, 252 Wis. 2d 179, 643 N.W.2d 194 ("facts occurring prior to a CHIPS dispositional order are frequently relevant to the issues at a termination proceeding"). C.J.T. does not directly respond to the Department's argument in its response brief that ***Tara P.*** applies here. Instead, C.J.T. reasserts her conclusory position that admitting the evidence about the thirteen prior referrals was "misleading" and "had dubious relevance to any of the elements of proof to establish J.M. was in continuing need of protection

or services in this case." We note, however, that C.J.T. readily concedes that "trial counsel had no duty to object to the evidence." We accept this concession and conclude that, based on C.J.T.'s concession and ***Tara P.***, counsel's decision not to object to the introduction of the thirteen referrals to the Department in prior CHIPS dispositional orders was reasonable and did not constitute deficient performance. *See* ***State v. Kimbrough***, 246 Wis. 2d 648, ¶¶31-35.

¶21 C.J.T. next argues that trial counsel was ineffective by failing to object to Goodman's testimony that, in Goodman's opinion, C.J.T. would not be able to meet the conditions of return within the nine months from the date of disposition in this case. C.J.T. argues that "[n]o foundation was laid for the social worker's opinion" and "[t]he court did not rule on its admissibility as expert testimony prior to trial." In response, the Department contends that Goodman's testimony was admissible as lay witness testimony because it was based on her experience and observations, rather than on expertise achieved through specialized knowledge and training. We conclude that C.J.T. has failed to demonstrate that counsel's performance was deficient.

¶22 In denying C.J.T.'s motion in limine to exclude this part of Goodman's trial testimony, the court reasoned:

> There are things that a social worker might offer an opinion about that would be something that any person would offer an opinion about based on their own observations and experiences and, you, these are the facts I saw, that is what my conclusion was.

¶23 We agree with the trial court that Goodman was properly permitted to testify on matters based on her experience and observations as a long-time

social worker in this case.[5] *See* WIS. STAT. § 907.01 (A witness not testifying as an expert may offer testimony of an opinion if the testimony is rationally based on the witness's perception; the testimony is helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and the testimony is not based on scientific, technical or specialized knowledge that an expert would possess.). The Department did not represent to the court or to C.J.T. that Goodman's testimony was based on scientific, technical, or the type of specialized knowledge one would expect an expert to possess. And C.J.T. does not claim that Goodman's testimony was *not* based on Goodman's perceptions, or that the testimony was not helpful to a clear understanding of Goodman's testimony. Moreover, C.J.T. provides no reason why it was necessary to hold a ***Daubert*** hearing to determine whether Goodman's testimony was admissible—***Daubert*** governs the admissibility of expert testimony, not lay testimony. *See, e.g.*, ***Kumho Tire Co. v. Carmichael***, 526 U.S. 137 (1999) (discussing ***Daubert***'s applicability to testimony by expert witnesses).

¶24 As for C.J.T.'s assertion that no foundation had been laid for Goodman's testimony on the topic at issue, C.J.T. fails to support this assertion with a developed argument or citation to the record. In any event, C.J.T. is just plain wrong. We have reviewed the part of the trial transcript of Goodman's testimony on this topic, and we are satisfied that the Department laid a sufficient foundation for the admission of Goodman's testimony that C.J.T. was not likely to meet the conditions of return within the statutorily required nine month period.

[5] Goodman testified that she was assigned C.J.T.'s file in March 2010. Thus, at the time of trial on October 13, 2014, Goodman had been working on C.J.T.'s case for close to four and one-half years.

¶25 Finally, C.J.T. argues that trial counsel performed deficiently by failing to object to various statements made by the GAL during her opening statements and closing argument, whereby, in C.J.T.'s view, the GAL improperly invoked J.M.'s "best interests," contrary to the Wisconsin Supreme Court's holding in ***Waukesha County Department of Social Services v. C.E.W***, 124 Wis. 2d 47, 60-61, 368 N.W.2d 47 (1985), that any consideration of the child's best interests in a termination proceeding is a proper concern only at the dispositional hearing, not the fact-finding stage. The GAL responds by arguing that her statements made during her opening and closing did not invoke the best interests of the child standard, but rather she was arguing that "the best interests of the child required the jury to answer the questions from the available evidence." Citing ***In re J.A.B. v. Waukesha County Human Services Department***, 153 Wis. 2d 761, 770, 451 N.W.2d 799 (Ct. App. 1989), the GAL points out that "only when the Court or the Guardian ad Litem ***instruct*** the jury that it should consider the best interests of the child, is there reversible error," and the record shows that neither the GAL nor the court gave the jury this instruction.

¶26 We conclude that trial counsel did not perform deficiently by failing to object to the GAL's challenged statements, and even assuming deficient performance, C.J.T. has not shown prejudice. When read in context, it is easy to see that the GAL did not suggest to the jury that it should consider J.M.'s best interests in reviewing the evidence; the opposite is true. Our reading of the transcript that includes the GAL's closing arguments plainly shows that the GAL asked the jury to consider the verdict questions on whether grounds existed to terminate C.J.T.'s rights based on evidence that C.J.T. did not meet the conditions for the return of J.M. to her home.

¶27 Moreover, we agree with the trial court that trial counsel had a reasonable strategic reason for not objecting to the GAL's statements. The record demonstrates that trial counsel considered objecting and weighed its benefits with its drawbacks, indicating that the GAL had made statements about J.M.'s best interests only in passing and did not want to highlight the issue by objecting: "if you make an objection ... you have to explain why and you'd highlight something for the jury that you otherwise wouldn't."

¶28 To her credit, C.J.T. concedes that the GAL did not "explicitly invoke[]" the best interests of the child, but argues that, by asking the jury to focus on J.M.'s "needs" in deciding the case, the GAL implicitly invoked the best interests of the child standard. We disagree. The record demonstrates that the only time that the GAL discussed J.M.'s "interests" was when she was discussing her role as a GAL, stating, "I was appointed to advocate for his *interests*." (Emphasis added.) It is not error to inform the jury about the role of the GAL. ***Door Cnty. DHFS v. Scott S.***, 230 Wis. 2d 460, 469, 602 N.W.2d 167, 171 (Ct. App. 1999).

¶29 C.J.T. also argues that the GAL violated the "golden rule" during closing arguments. We disagree. As the circuit court aptly explained, a golden rule violation involves asking the jurors to place themselves in the plaintiff's shoes in civil cases for the purposes of determining compensation, or the victim's shoes in criminal cases. *See* ***State v. DeLain***, 2004 WI App 79, ¶23, 272 Wis. 2d 356, 679 N.W.2d 562, *aff'd*, 2005 WI 52, 280 Wis. 2d 51, 695 N.W.2d 484. The underlying reason for imposing this rule is that these types of statements "appeal to the jurors' sympathy for persons who have been injured or victimized by a crime." ***Id.*** C.J.T. has failed to point to any supporting case law for the proposition that the rule also applies to asking the jurors to put themselves in the

parent's place in TPR cases. In her reply brief, C.J.T. points to a case that she argues stands for this proposition, ***Dostal v. Millers National Ins. Co.***, 137 Wis. 2d 242, 404 N.W.2d 90 (Ct. App. 1997). We do not read ***Dostal*** as supporting C.J.T.'s position. ***Dostal*** was a civil case where the alleged "golden rule" violation related to the jury's determination of the plaintiff's compensation. ***Id.*** at 258-60. ***Dostal*** is distinguishable on its facts. Here, the GAL asked the jurors to put themselves in C.J.T.'s position to understand what a parent would have done to insure the health and safety of his or her child. C.J.T. is neither a plaintiff in a civil case or a victim. We find no violation of the "golden rule" here.

II. Inadmissible Hearsay Claim

¶30 C.J.T.'s next argument is that she is entitled to a new trial because the trial court erred in admitting prejudicial hearsay evidence during trial. Specifically, C.J.T. asserts that testimony from social workers Goodman and Leah Williams regarding C.J.T.'s drug use constituted hearsay. C.J.T. points to the following testimony by Goodman:

> The dad explained to us that even when they had appeared to be testing clean, that they had in fact switched from marijuana, or THC, to synthetic marijuana. The kind that they explained were K2, or what's called Happy Shaman. And our drug tests do not test for those. So while we were under the impression for seven months that things were going well and people were testing clean, they in fact were not.
>
> He explained to us that not only were they both using on a regular basis, but it had caused a lot of problems for them. All the money that they had was going to this. They would go to extreme measures to get it, pawning their belongings, walking to the smoke shop in La Crescent, a lot of arguments over finances then, and really he described the environment as dark and ugly. Everybody was arguing.

Williams also testified as follows:

> [T]he father came into the office and met with Bobby and I and admitted that they had been using K2 for the past year and that they had spent a lot of their money on it, all of their money on it, that they had been pawning their things; that [he] and C[.J.T.] had not been getting along and that they had used actual marijuana, too, you know, that it was K2 and marijuana.

¶31 We acknowledge that testimony regarding out-of-court statements made by the father to the social workers is, generally speaking, likely hearsay. However, as the Department points out, any error the court may have committed by admitting this testimony was harmless.

¶32 The circuit court found that ample evidence was admitted showing that C.J.T. used and was dependent on K2 and marijuana, including C.J.T.'s own admission during her testimony at trial when asked whether it was true that she was using K2 instead of marijuana. C.J.T.'s therapist also testified that C.J.T. admitted to using K2 to avoid testing positive on drug tests and to ongoing marijuana use. Accordingly, even if the admission of the statements was in error, we conclude that such error would have been harmless. *See* ***State v. Weed***, 2003 WI 85, ¶29, 263 Wis. 2d 434, 666 N.W.2d 485 (noting that harmless error analysis requires us to determine whether the alleged error affected the jury's verdict).

III. Conflict of Interest Claim

¶33 C.J.T has also moved for a new trial on the ground that the GAL had a conflict of interest. The alleged conflict of interest arose when, approximately one year after the petition to terminate C.J.T.'s parental rights in this case was filed, the Department's counsel in this case, Christine Clair, retained the GAL in an unrelated small claims personal injury matter. C.J.T. asserts that representing the Department's counsel and J.M.'s best interests at the same time posed a

"significant risk" to the GAL's ability to advocate on behalf of both. We are not persuaded.

¶34 The GAL was first appointed to represent the best interests of J.M. in February 2010 in the earlier CHIPS action. The petition in this case was filed in June 2013 and the GAL entered an admission to the termination of C.J.T.'s rights on behalf of J.M. The GAL was retained by Clair one year later in June 2014 to represent Clair in the unrelated matter.

¶35 C.J.T. concedes that she cannot prove "specific prejudice" but claims that the GAL's alleged conflict created an "allegiance" to Clair, and through Clair the Department, in violation of Supreme Court Rule 20:1:7(a). This argument rests on speculation and conclusory assertions that are not supported by the record, or any other evidentiary showing that C.J.T. is required to make to demonstrate that the GAL had a conflict of interest. In any event, C.J.T. has not shown that the GAL's dual representation was adverse to C.J.T.'s interest. *See* ***Guerrero v. Cavey***, 2000 WI App 203, ¶12, 238 Wis. 2d 449, 617 N.W.2d 849 (where the representation is dual, the court must determine whether the attorney "has undertaken representation which is adverse to the interests of a present client") (quoting ***La Crosse Cnty. DHS v. Rose K.***, 196 Wis. 2d 171, 178, 537 N.W.2d 142 (Ct. App. 1995).

¶36 Turning to SCR 20:1:7(a) (2014), it states in pertinent part:

> [A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the

> lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

¶37 We conclude, applying a plain language analysis of SCR 20:1:7(a) to the facts of this case, that C.J.T. fails to demonstrate that the GAL had a conflict of interest by representing J.M.'s best interests in this case and the Department's counsel in a separate unrelated matter. C.J.T. does not provide a persuasive argument that her representation of J.M.'s best interests was directly adverse to Department's counsel. On the contrary, the GAL's representation of counsel was completely unrelated to this termination proceeding. We acknowledge that there is the potential for adverse representation here if the GAL took a position that challenged the Department's position, but that is not the case. As we indicated, the GAL entered an admission on J.M.'s behalf to terminating C.J.T.'s parental rights to J.M., a position strongly supported by the Department. Moreover, the GAL's admission occurred approximately one year before her representation of Clair. Under these facts, we fail to see how C.J.T. could have developed an improper alliance with the Department by representing Clair as well as J.M.'s best interests. In other words, the GAL had already aligned J.M.'s best interests with the Department's interests long before the GAL was retained to represent Clair. Thus, we see no conflict on that basis. This rationale also supports our view that C.J.T. has not shown that there was a significant risk that the GAL's representation of Department counsel materially limited her responsibility to J.M.'s best interests.

CONCLUSION

¶38 For the foregoing reasons, we are satisfied that C.J.T.'s counsel provided effective assistance in the termination proceedings and that the court did not err in admitting what C.J.T. characterizes as prejudicial hearsay. We are also

satisfied that the GAL's dual representation of the Department's counsel did not affect the GAL's representation of J.M.'s best interests in this case. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.