2024 IL App (5th) 231252-U

NO. 5-23-1252

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ARYEN W., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County.
	)	
Petitioner-Appellee,	)	
	)	No. 23-JA-84
v.	)	
	)	
Autumn A.,	)	Honorable
	)	Matthew D. Lee,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and McHaney concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence amply supported the circuit court's finding that the minor was neglected. As any contrary argument would be frivolous, we allow appointed counsel to withdraw and affirm the circuit court's judgment.

¶ 2 Respondent, Autumn A., appeals the circuit court's orders finding that her son, Aryen W., was neglected and making him the court's ward. Her appointed appellate counsel concludes that there is no reasonably meritorious argument that the court erred. Accordingly, he has moved to withdraw as counsel on appeal. He has notified respondent of his motion and we have provided her ample opportunity to respond. However, she has not done so. After reviewing the record on appeal and counsel's motion, we agree that this case presents no nonfrivolous issues. Thus, we grant counsel leave to withdraw and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 Soon after Aryen's birth, the Department of Children and Family Services (DCFS) was notified that the birth had occurred without the assistance of medical professionals. Respondent was believed to be leery of receiving medical assistance because she had had other children removed from her custody due to her drug abuse. DCFS began searching for the family, finally locating them on August 3, 2023. The agency took Aryen into protective custody.

¶ 5 On August 4, the State filed a petition for adjudication of wardship, alleging that Aryen was neglected because his parents had failed to correct the conditions that resulted in a prior finding that they were unfit to parent his sister, D.W.

¶ 6 At a shelter-care hearing, Catherine McGlone, a DCFS investigator, testified that she was told that Aryen was born at a private residence without the presence of a medical professional. A DCFS caseworker had told her that respondent was previously found unfit to parent her older child, D.W. In that case, respondent and D.W.'s father, Brian W., had failed to comply with requirements that they take drug tests, submit to substance abuse treatment, obtain psychiatric services, and attend anger management classes.

¶ 7 For about 10 days, McGlone unsuccessfully attempted to locate the family. On August 3, her supervisor dispatched her to an address in Penfield, where she found them. They told her Aryen had a doctor's appointment that day, but McGlone took Aryen to Carle Hospital for an examination. The exam revealed that Aryen's weight placed him in the third percentile, he had thrush so extreme "that it looked like cottage cheese" in his mouth and probably caused pain that interfered with his ability to take food, and his eyes were crusty, which the doctor said could be a symptom of syphilis or gonorrhea. Aryen was tested for both, but results were not yet available.

Aryen was also very hungry at the hospital. Both respondent and Brian refused to give her their address.

¶ 8 The court took judicial notice of relevant documents from D.W.'s case. There, the court found both parents unfit due to their longstanding substance abuse, failure to engage in services, and inadequate housing.

¶ 9 Respondent testified that Aryen was born on July 24 in a vehicle on the way to Gibson Area Hospital. She first learned she was pregnant on June 6, when she had gone to an emergency room for kidney pain. Thereafter, she received prenatal care from Dr. Lanoue. On July 2, she went to the hospital thinking she was in labor. She was admitted and told that she was 33 weeks pregnant. The doctor thought it was too early for the birth, so he stopped labor and discharged her. She had undergone drug screens during visits, which were all negative, except for marijuana, for which she had a medical marijuana card. She underwent a substance abuse evaluation at a facility in Danville, which did not recommend treatment services. She also called her caseworker daily to see if she was required to provide drug screens. However, the only time she was told to do so, she was informed by clinic staff that she was not on their records. Her caseworker, Sherrie Cummins, knew she lived in Rossville and had visited her there as recently as July 13.

¶ 10 Every Tuesday, after visiting D.W. in Rantoul, she and Brian visited relatives in Penfield. On August 3, she was in Penfield, en route to Carle Hospital for an appointment for Aryen. He had thrush, and respondent also wanted him to have a checkup. She stopped in Penfield to pick up Brian, who was at his parents' home, where he occasionally worked.

¶ 11 Brian W. testified that he, respondent, Aryen, and respondent's adult sister lived in a house in Rossville belonging to respondent's family. On August 2, he had worked at his parents' home in Penfield and was preparing to work there again on August 3 when his parole officer arrived

unexpectedly. The officer said that DCFS was concerned about Aryen and wanted to ensure that he was receiving medical attention. He said if that did not happen, "there were gonna be kidnapping charges," so Brian said they would take Aryen to the emergency room as soon as he could contact respondent.

¶ 12 The circuit court found respondent's testimony to be incredible and found both probable cause and immediate and urgent necessity and thus granted DCFS temporary custody of Aryen but authorized the parents to have supervised visitation.

¶ 13 McGlone testified again at the shelter-care hearing. She was assigned to investigate allegations that respondent's older daughter, D.W., had been removed from her custody, so that Aryen was considered to be at risk. A search for the family ensued, including visiting several addresses in Champaign and Vermilion Counties and contacting regional hospitals. The family was eventually located in Penfield.

¶ 14 When McGlone told the parents that she was going to take protective custody of Aryen and take him to Carle Hospital, respondent repeatedly said there was nothing wrong with him and that DCFS did not need to take him. Hospital personnel examined Aryen. His eyes, which were crusty, were swabbed and cultured. He was hungry.

¶ 15 Cummins testified that she is the foster care case manager for the Center for Youth and Family Solutions (CYFS) in Champaign. She had been the caseworker on D.W.'s case since January 2023. During that time, respondent had been referred for weekly random drug drops; a substance abuse assessment and any recommended treatment; counseling; domestic violence classes and parenting classes and had been scheduled for visitations. She completed parenting classes and visited with D.W., but she cooperated in only one drug drop. She had engaged in no

substance abuse assessment, no counseling, and no domestic violence classes or counseling, and Cummins had never been close to suggesting reunification.

¶ 16 Respondent and Brian had lived in various places including Hoopeston, Rossville, and Champaign, and Brian at one point was reported to be living in a tent in the woods. McGlone had planned to refer respondent to New Directions in Vermilion County but, before she could do so, she moved again. She did refer her to The Wellness Shop in Rantoul and to Rosecrance for a substance abuse assessment and counseling, but respondent never engaged with either agency.

¶ 17 The parents visited D.W. twice per week, at CYFS, under the supervision of an agency employee. Unsupervised visits had never been considered because the conditions leading to loss of custody had not been corrected nor had even progress in services been shown. However, the visits Cummins observed went "very well." A few reports from other visits raised some concerns, but overall, the visits went acceptably well. CYFS had provided gasoline cards for visits but not for drug drops, though the agency had offered bus passes for drops when the parents lived in or near Champaign. Respondent had reported their car was not in good working order. Respondent had maintained "sporadic" contact with CYFS. Visits with Aryen were scheduled for once a week, for two hours.

¶ 18 The court found that Aryen was neglected. Explaining its findings, the court noted that the parents were found unfit to parent D.W. in part due to "longstanding substance abuse issues." Despite the necessity of services to remediate these issues, the parents had not participated in counseling or completed drug screens. Respondent then gave birth to Aryen without medical assistance and DCFS had to exert "significant effort" to locate the family.

¶ 19 Thereafter, CYFS filed its dispositional report. The report noted that neither parent attended the six-month case review, and neither had participated in services. Meanwhile, Aryen

was doing well in his foster placement. The report recommended that DCFS be given custody of Aryen. Respondent's counsel accepted the report's recommendations for custody and guardianship. The court thus found it in Aryen's best interests to be found neglected and made a ward of the court. Respondent filed a notice of appeal.

¶ 20 ANALYSIS

¶ 21 Respondent's appointed appellate counsel concludes that the only issue she could conceivably raise on appeal is whether the court erred in finding that Aryen was neglected. He concludes, however, that this issue is frivolous. We agree.

¶ 22 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2022)) prescribes procedures for deciding whether a minor should be removed from his or her parents' custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. In any such proceeding, the paramount consideration is the best interests of the child. *Id.*

¶ 23 The Act requires a two-step process to decide whether a minor should become a ward of the court. *Id.* The first step is an adjudicatory hearing at which " 'the court shall first consider only the question whether the minor is abused, neglected or dependent.' " *Id.* ¶ 19 (quoting 705 ILCS 405/2-18(1) (West 2010)). Following that hearing, if the court finds that a minor is abused, neglected, or dependent, the court moves to step two, which is the dispositional hearing. *Id.* ¶ 21 (citing 705 ILCS 405/2-21(2) (West 2010)). There, the court decides whether it is consistent with the health, safety, and best interests of the minor and the public that the minor be made a ward of the court. *Id.*

¶ 24 Here, the evidence overwhelmingly supported the court's finding that Aryen was neglected. Respondent and Brian had recently been found unfit to parent Aryen's sister, D.W. That case demonstrated that both parents had longstanding substance-abuse issues that they had not

meaningfully addressed. Neither had engaged with services intended to remediate those issues and had not participated in drug screenings.

¶ 25 Aryen was born without the assistance of medical professionals. The family apparently moved around a lot and DCFS had considerable trouble finding them. When the agency finally located the family and saw to it that Aryen was seen by a doctor, he was found to have significant untreated medical conditions and was extremely hungry.

¶ 26 In her testimony, respondent tended to blame others for her lack of participation in services but at issue at that step of the proceedings was deciding whether the minor was neglected, not assessing fault. *Id.* The evidence also showed that the parents regularly visited with the minor and that the visits went reasonably well, but a two-hour visit in a structured setting is a far cry from being able to parent the minor full-time. Cummins testified that, while the visits went reasonably well, unsupervised visits were never seriously considered. Thus, there is no good-faith argument that the court erred in finding Aryen neglected.

¶ 27 Counsel further concludes that there is no argument to be made that the court erred by making Aryen a ward of the court. He noted that respondent, through counsel, concurred in the recommendations of the dispositional report that Aryen be made the court's ward. Thus, respondent cannot argue that the court's order was erroneous.

¶ 28 CONCLUSION

¶ 29 As this appeal presents no issue of arguable merit, we grant counsel leave to withdraw and affirm the circuit court's judgment.

¶ 30 Motion granted; judgment affirmed.