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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> Tayvius M.,	)	Appeal from the Circuit Court of
	)	Winnebago County.
Minor.	)	
	)	No. 03—JA—41
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	Honorable
v. Taboris M.,	)	Patrick L. Heaslip,
Respondent-Appellant).	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Bowman and Birkett concurred in the judgment.

**ORDER**

*Held:* Appellate counsel's motion to withdraw as counsel granted where there were no issues of arguable merit regarding the trial court's findings that respondent was an unfit parent and that termination of respondent's parental rights was in the minor's best interests.

On October 23, 2009, the State petitioned to terminate respondent's, Taboris M.'s, parental rights to his son, Tayvius M. (born October 17, 2000).<sup>1</sup> On August 26, 2010, the trial court found the State proved by clear and convincing evidence that respondent is an unfit person under sections

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<sup>1</sup>In a related case, appeal No. 2—10—1054, the State petitioned to terminate respondent's parental rights to another son, Trey M. On September 2, 2010, the court granted that petition.

50/1(D)(b) and 1(D)(m)(i)-(iii) of the Adoption Act (Act) (750 ILCS 50/1(D)(b), (m)(i)-(iii) (West 2008)), and that is in Tayvius's best interests for respondent's parental rights to be terminated.<sup>2</sup> On September 2, 2010, the court entered the order terminating respondent's parental rights. Respondent appeals.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies to termination cases). The attorney states that he has read the record and has found no issues of arguable merit. Further, the attorney supports his motion with a memorandum of law providing a

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<sup>2</sup>Section 50/1(D)(b) of the Act provides that a parent may be unfit for failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2008). Section 50/1(D)(m) of the Act enumerates the following three grounds for unfitness:

"Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor under Section 2—3 of the Juvenile Court Act of 1987 or dependent minor under Section 2—4 of that Act, or (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under Section 2—3 of the Juvenile Court Act of 1987 or dependent minor under Section 2—4 of that Act." 750 ILCS 50/1(D)(m) (West 2008).

statement of facts, potential issues, and an argument why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded.

Counsel asserts that it would be frivolous to argue that it was against the manifest weight of the evidence for the trial court to find: (1) that respondent is unfit; and (2) that termination of respondent's parental rights is in the child's best interests. We agree. The following evidence reflects that it would be frivolous to argue that the court's findings were contrary to the manifest weight of the evidence.

## I. BACKGROUND

### A. Permanency Review Hearings

Tayvius was first adjudicated neglected on June 20, 2003—seven years prior to the termination hearing. Following the neglect adjudication, the court held a series of permanency review hearings. The transcripts from those hearings reflect that, in October 2003, respondent was arrested for domestic battery of Tayvius's mother. On January 28, 2004, the trial court found respondent unfit and warned him that his parental rights could be terminated if he did not make reasonable progress toward Tayvius's return during the nine months following the adjudication of neglect or any nine month period thereafter. "You have to make reasonable progress. You [ ] haven't been doing that. By not doing that, you could end up losing your children."

Subsequently, respondent generally participated in services and treatment. However, a hearing transcript from July 27, 2004, reflects that respondent was incarcerated for a period, which resulted in his inability to attend and, consequently, his being dropped from, substance abuse treatment. The court found that respondent did not make reasonable progress. A January 25, 2005,

hearing transcript reflects that, in 2004, respondent: (1) was indicated by the Department of Children and Family Services (DCFS) for sexual penetration of a 12-year-old girl and an investigation was pending involving another minor; (2) received a DUI in December 2004; (3) had tested positive for marijuana on one of his drug tests; and (4) had refused to take other drug tests. The court found that respondent had not made reasonable efforts.

On July 26, 2005, it was reported that, while respondent had obtained employment, attended substance abuse counseling, and regularly visited his children, in March 2005, a domestic dispute between respondent and Tayvius's mother resulted in respondent being incarcerated for two months. The court again found that respondent failed to make both reasonable efforts and reasonable progress. Respondent challenged the court's finding of no reasonable progress, stating, for example, that he had been working hard to maintain clean drug drops. The court commented:

“You had nine months to make reasonable efforts to work at curing the conditions which caused the children to be taken from you, and then, thereafter, you have to continue to make reasonable efforts and reasonable progress every nine-month period thereafter, and you haven't been doing it. Now, I — Hopefully, you come back in six months, and I can say that you have, but I can't say, given the fact that you've been arrested and spent some time in the county jail for domestic violence, that that's making reasonable efforts or reasonable progress. It just isn't.”

At the next three permanency review hearings (January 24, 2006, August 1, 2006, January 30, 2007), the court found that respondent *had* made reasonable efforts. Although at one point his participation in services was “spotty” and there were concerns regarding his employment and lack of housing, respondent did, overall, engage in services, including “intense” sex offender counseling,

and regularly visited with Tayvius. At the January 30, 2007 hearing, however, the trial judge voiced his concern that the case had been open for four years which is “way too long” and that the children were in need of permanency. Therefore, while the court agreed, in light of respondent’s efforts, to leave unchanged the goal of return home, it stated that if, at the next hearing, the children were no closer to returning home, the court would entertain a goal change.

Nevertheless, at the next three hearings and despite a finding on July 30, 2007, that respondent did not make reasonable efforts, the court maintained the goal to return Tayvius home. Specifically, on July 30, 2007, the court found that respondent did not make reasonable efforts because, in March 2007, respondent was charged with having open alcohol in a car while he was in the driver’s seat. In addition, the court learned that, in June 2007, respondent had been arrested for disorderly conduct while intoxicated in Tayvius’s mother’s house. Further, respondent had missed visits with Tayvius, had failed to attend an assessment, and a DCFS worker testified that respondent was being investigated for maintaining contact with the child for whom he had been indicated for sexual abuse.

At the January 22, 2008, hearing, the court again found respondent had made reasonable efforts; however, the evidence reflected that, due to charges of predatory sexual assault (respondent said he had been “set up”), respondent had been incarcerated since August 2007 and, therefore, did not attend any services or have any visits with Tayvius.

At the August 26, 2008, hearing, the court found that respondent made reasonable efforts. The court heard testimony that, since his release from jail, respondent had completed a sex offender evaluation and his drug tests were negative. However, the court also learned at the hearing that a sex offender evaluation had rated respondent as having a high risk to reoffend and, therefore, in the

criminal case, the trial judge had entered an order as part of respondent's probation that respondent not have any contact with minors. Accordingly, when the judge in the criminal court learned that respondent had engaged in contact with Tayvius, the court sentenced respondent to time in jail for violating the criminal court order. Respondent confirmed that he had pleaded guilty to aggravated criminal sexual abuse of a child and that the plea included an order that he have no contact with minors. However, he denied that he had any contact with his children, and he accused the DCFS worker of "lying."

On February 23, 2009, the court found that respondent did not make reasonable efforts and changed the goal to substitute care pending court determination of parental rights. The court heard testimony that: respondent's drug tests remained negative; respondent was not visiting with Tayvius because the criminal court order prohibited it; respondent was only partially attending counseling because of his inability to pay; respondent was residing with Tayvius's mother and they did not together have adequate housing for the children. Further, the court was informed that there was a hearing scheduled in the criminal matter for revocation of respondent's probation. The court voiced concerns about the fact that respondent's inability to pay for treatment negatively affected his ability to participate in required services.

On May 19, and May 26, 2009, respondent was in jail but was nevertheless brought by corrections to the court for two hearings that were, ultimately, continued. On August 24, 2009, the court confirmed that respondent had not had contact with Tayvius in light of the no-contact order and that he had been incarcerated for several weeks due to probation violations.

On October 23, 2009, the State petitioned for respondent's parental rights to be terminated. On November 2, 2009, respondent appeared before the court and was arraigned on the petition. A

trial date was scheduled for February 11, 2010. The court stated “A reminder to the parents. You must appear for those court dates. If you fail to appear, we will proceed to the trials in your absence.”

A few weeks before trial, respondent was present at a pre-trial conference. There, the court reminded respondent of the trial date and that “you must appear at that time. If you fail to do so, we will proceed to the trial in your absence.” At a status hearing in late January 2010, however, the trial date was rescheduled for May 12, 2010, and the February 11, 2010, date was retained as a status date. Respondent was present at the February 11, 2010, status, where the trial court did not make findings as to reasonable efforts, but did hear testimony that respondent had been engaged in services over the prior six months and was likely in compliance with his terms of probation. The court reminded everyone that trial was set for May 12, 2010.

On May 12, 2010, however, respondent’s substitute counsel requested a trial continuance in light of the fact that respondent’s counsel underwent surgery the preceding day. Respondent was not present. A new trial date was scheduled for June 23, 2010. On June 23, 2010, however, at the request of Tayvius’s mother, the trial date was again continued to August 26, 2010. Respondent was not present.

#### B. Unfitness Hearing

Trial commenced on August 26, 2010. Respondent was not present. His counsel informed the court that respondent would not be able to attend because he “is a full-time student,” and that she was not prepared for the case to proceed. She requested a continuance. The State objected, and the court denied the motion.

The unfitness portion of the hearing began with Tayvius's mother testifying to and signing a consent for Tayvius to be adopted by a specific person (his current foster mother). Next, the State presented four witnesses: Jeff Sundberg, respondent's sexual abuse counselor, Christina Haske, a police detective, and Jodi Yakowycz and Maggie Aspling, child welfare specialists. Respondent presented no evidence and cross-examined only Sundberg and Yakowycz.

In sum, the witnesses testified that Sundberg first saw respondent from 2005 to 2006, but discharged respondent from services for poor attendance. Later in 2006, social services re-referred respondent to Sundberg. In 2007, however, respondent terminated his sexual offender counseling by telling Sundberg that social services said that he no longer needed services. Sundberg never received any communication verifying or contradicting respondent's assertion that respondent's counseling should be discontinued, and it appeared to Sundberg that respondent was the one who decided to end the counseling. In Sundberg's opinion, respondent's counseling was not complete. Sundberg again saw respondent in 2008 in the county jail on account of respondent's arrest for a new sex offense; respondent never completed that round of counseling.

Detective Haske testified that, in 2007, she investigated an aggravated criminal sexual abuse offense by respondent against a 10-year-old girl. In her interview with respondent, respondent stated that he knew the victim but "people lie on him all the time," that the victim's father had placed an object up the child's rectum to set up respondent, and that the victim had been forced to accuse respondent. Haske also discussed with respondent his 2004 sex crime involving a 12-year-old victim, as well as respondent's relationship with a 15- or 16-year old minor. Respondent said that he first started seeing the girl when she was 15 or 16, but that "his rule is that he only has sex with

girls once they turn 17.” Apparently, at the time of the interview, respondent was expecting a child with the girl.

Yakowycz testified that, in 2008, respondent violated a condition of his bond by contacting Tayvius. Respondent was arrested because of the bond violation. Further, Yakowycz testified that DCFS had declined to pay for respondent’s sex offender counseling because it was DCFS’s determination that participants who were responsible for paying for their own counseling were generally more successful in their treatment because they were more invested in it. This was discussed with respondent, and he subsequently attended counseling, although he never completed it. Finally, Yakowycz testified that respondent never made sufficient progress for the children to be returned to his care or for him to have unsupervised visits.

Aspling testified that respondent did not provide any food, clothing, shelter, or support for Tayvius, nor had he visited with Tayvius in the last six months to one year. Aspling testified that, on several occasions, she had provided respondent with her contact information, but he inquired about the children only when she saw him in the hallway during court hearings.

The State rested. Respondent’s counsel presented no evidence and, in closing, asked only that the court find that the State did not meet its burden. The trial court took judicial notice of several documents, including all of respondent’s service plans, the criminal court order, and all orders from the permanency-review hearings. Thereafter, the court found that the State established by clear and convincing evidence that respondent was unfit.

### C. Best Interests Hearing

Over respondent’s counsel’s renewed objection, trial immediately commenced on the best interests portion of the petition. Aspling testified for the State that: (1) Tavyius and his brother Trey

were in the same foster home; (2) they had been there since April 2008; (3) they were well-bonded to the foster family, happy, and that the home is an “extremely stable” environment; (4) the foster family is willing to adopt both boys; (5) the foster mother’s sister has placement of the boys’ sister, with whom they have a strong bond, and Aspling was “absolutely” certain that the foster parents would continue to encourage that bond after adopting the boys; (6) the boys have stabilized since interaction with their biological parents has decreased and their behaviors had “absolutely” sufficiently improved in the foster home; (7) when the idea of adoption was discussed with the boys, they expressed “no concerns whatsoever” and Aspling believed it was their wish to remain in the foster home; and (8) the boys continue to need mental health services and, while the foster parents are in a position to provide those services, respondent is not. Accordingly, Aspling testified that it is in Tayvius’s best interest for respondent’s parental rights to be terminated and he be adopted by the foster family.

The witness was not cross-examined. The court took judicial notice of the evidence presented at the unfitness portion of the hearing. The court ruled that the State had established by a preponderance of the evidence that it was in Tayvius’s best interest that respondent’s rights be terminated. Respondent appeals.

## II. ANALYSIS

Respondent’s counsel argues that there are no meritorious arguments to raise on appeal. Specifically, he argues that the court’s unfitness finding would be upheld on appeal because the State needed to establish only one ground to uphold the finding and, reviewing the court’s finding under the manifest-weight-of-the-evidence standard, the evidence supported at least one, and likely, all grounds the court found satisfied. Further, counsel argues that any argument that the court erred in

denying respondent's motion to continue the trial would fail under the abuse-of-discretion standard. Finally, he argues that the court's finding that termination of respondent's parental rights was in Tayvius's best interests was not contrary to the manifest weight of the evidence and, therefore, any such argument would fail on appeal. We agree.

The Juvenile Court Act provides a two-stage process for the involuntary termination of parental rights. 705 ILCS 405/2—29(2) (West 2004). The State must first establish parental unfitness by clear and convincing evidence, followed by a showing by a preponderance of the evidence that termination is in the children's best interests. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990).

Here, the trial court first found that the State proved by clear and convincing evidence that respondent was an unfit person under section 50/1(D)(b) and the three grounds under section 50/1(D)(m) of the Act. Any one of these grounds may support an unfitness finding. *In re D.C.*, 209 Ill. 2d 287, 296 (2004) (“[E]very alleged ground for finding a parent unfit need not be proven. A parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence”). Accordingly, where the evidence clearly supported the court's finding that respondent was unfit under section 50/1(D)(m)(ii) of the Act, we conclude that there is no arguable merit to an argument that the court's finding of unfitness was contrary to the manifest weight of the evidence. *In re Janira T.*, 368 Ill. App. 3d 883, 892 (2006) (trial court's finding that unfitness was established by clear and convincing evidence will not be disturbed on review unless against the manifest weight of the evidence).

Specifically, the evidence reflected that, under section 50/1(D)(m)(ii), respondent did not make reasonable progress toward the return of the child within 9 months after the adjudication of

neglect—which, here, was June 20, 2003. Seven months after that adjudication, on January 28, 2004, the court found respondent unfit. Thirteen months after the neglect adjudication, on July 27, 2004, the court found respondent had not made reasonable efforts. Nineteen months after the neglect adjudication, on January 25, 2005, the court again found that respondent had not made reasonable efforts. Finally, on July 26, 2005, two years after the neglect finding, the court found respondent failed to make reasonable efforts and reasonable progress. Given the record evidence that respondent, after the neglect adjudication, was arrested for DUI, tested positive for drugs, and was incarcerated for both domestic abuse and sex crimes against minors, we cannot conclude that it is clearly evident that the court's conclusion that respondent did not make reasonable progress toward the return of Tayvius is contrary to the evidence. See *In re D.S.*, 217 Ill. 2d 306, 322 (2005) (a finding is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly evident).

It was not until January 2006, two and one-half years after the neglect finding, that respondent was first found to have made reasonable progress. That finding was based on evidence that respondent made efforts to visit with his children, maintained clean drug drops, and engaged in counseling. While these efforts were laudable, as "harsh" as it may seem, the Act requires that a respondent *continually* make progress during a nine-month period or be deemed unfit. *In re K.H.*, 346 Ill. App. 3d 443, 455 (2004). Respondent's efforts two and one-half years after the neglect adjudication do not alter the effect of his failure during the first nine-months after the neglect adjudication to make reasonable progress. Moreover, we note that, even after respondent was found to have made reasonable efforts, he nevertheless failed to complete the required sex offender counseling and he experienced continued intermittent periods of incarceration, probation violations,

an arrest for disorderly conduct, and a charge for possessing open alcohol in a vehicle, all of which resulted in the trial court's occasional findings that, again, respondent *failed* to make reasonable progress. Thus, the evidence clearly supports the court's finding that respondent did not make reasonable efforts and, therefore, reasonable progress toward the return of Tayvius to his care. Counsel is correct that there is no meritorious argument on appeal regarding the trial court's unfitness finding.

We further agree with counsel that a challenge to the court's findings on the basis that the court did not continue the trial would also fail. We review for an abuse of discretion a court's decision to deny a motion for continuance. *In re Tashika F.*, 333 Ill. App. 3d 165, 169 (2002). A party does not have an absolute right to a continuance, and, to prevail on an argument that the court abused its discretion, the complaining party must establish prejudice. *Id.* Here, the record is clear that respondent was informed on multiple occasions that, if he did not appear for trial, the trial would proceed in his absence. The record does not reflect that respondent was not informed of the trial date. While the date was continued several times, respondent's counsel appeared and the only explanation for respondent's absence was a general statement that he was a student, not that he had no knowledge of the date. Thus, we cannot find the court abused its discretion in refusing to continue a case that had been pending for seven years.

Finally, we conclude that there is no arguable merit to a claim that it was against the manifest weight of the evidence or an abuse of discretion for the trial court to conclude that termination of parental rights is in Tayvius's best interests. See *Janira T.*, 368 Ill. App. 3d at 894 (trial court's finding that termination is in child's best interests will not be disturbed on review unless against the manifest weight of the evidence or an abuse of discretion). In making a best interests determination,

the trial court must consider the factors set forth in section 1—3(4.05) of the Juvenile Court Act (705 ILCS 405/1—103(4.05) (West 2008)), including the children's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Janira T.*, 368 Ill. App. 3d at 894.

Here, the court heard evidence that Tayvius had been in the same foster home for two years, had developed strong bonds with the family, which was willing to adopt him and his brother, and that the foster family after adoption would continue to encourage Tayvius's relationship with his biological sister. Further, the evidence before the court was that Tayvius had thrived in the foster home, which was an "extremely stable" environment and that, unlike respondent, the family was in a position to obtain the continuing services that Tayvius needed. In contrast, the court heard evidence that respondent had not completed the counseling that was required of him and was not in a position to provide for Tayvius's ongoing needs. Moreover, respondent had never progressed to a point where he had unsupervised visits with Tayvius. Accordingly, the court did not err in concluding (seven years after the neglect finding) that termination of respondent's rights was in Tayvius's best interests.

After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

### III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

No. 2—10—1055

Affirmed.