

2012 IL App (2d) 120370-U  
No. 2-12-0370  
Order filed August 20, 2012

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> R.C., a Minor	)	Appeal from the Circuit
	)	Court of Winnebago County.
	)	
	)	No. 09-JA-386
	)	
	)	Honorable
(The People of the State of	)	Mary Linn Green,
Illinois, Petitioner-Appellee, v.	)	Patrick L. Heaslip,
Rickie C., Respondent-Appellant).	)	Judges, Presiding.

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Justice Hutchinson delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Burke concurred in the judgment.

**ORDER**

*Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appellate counsel's motion to withdraw would be allowed and the judgment of the circuit court would be affirmed where no issues of arguable merit were identified on appeal concerning the trial court's rulings that respondent was shown to be unfit by clear and convincing evidence and that it was in the best interest of the minor that respondent's parental rights be terminated.

¶ 1 This appeal arises from a juvenile court proceeding relating to the care and custody of the minor, R.C., in October 2009. In January 2010, the trial court adjudicated R.C. a neglected minor due to an environment injurious to his welfare as a result of his mother's substance abuse and her inability to protect the minor from risk of harm. At the time of his birth and continuously thereafter,

several of R.C.'s older siblings were also subject to proceedings in the juvenile court, and ultimately, those minors were placed for adoption after the parental rights of the minors' parents were terminated. After two years of permanency planning proceedings, family drug court proceedings, and attempts by the Illinois Department of Children and Family Services (DCFS) and its agency partners to provide rehabilitative and restorative services for R.C. and his parents, the trial court terminated the parental rights of respondent, Rickie C., the mother Danielle M., and "All Whom It May Concern" on March 9, 2012. While the mother executed a final and irrevocable specified consent to the adoption of R.C. on January 4, 2012, respondent and "All Whom It May Concern" were found unfit persons after hearing. Thereafter, the trial court also found that it was in the best interest of the minor that all parental rights and residual parental rights to the minor be terminated and that the minor be placed under the legal guardianship and custody of DCFS and that the guardian be empowered to consent to the adoption of the minor. This timely appeal followed by respondent. The mother is not a party to this appeal. We affirm.

¶ 2 On October 21, 2009, the State filed a three-count petition alleging that R.C. was a neglected minor due to an environment that was injurious to his welfare, citing three theories: (1) that the minor's siblings were not in the mother's care and the mother had not cured the conditions that caused the custody and guardianship of the minor's siblings to be with DCFS, thus placing the minor at risk of harm, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(b) (West 2008)); (2) the minor's mother had a substance abuse problem that prevented her from properly parenting, thus placing the minor at risk of harm, pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2008)); (3) the minor's father, Rickie C., had a substance abuse problem that prevented him from properly parenting, thus placing the minor at risk of harm,

pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2008)). We note that the mother had indicated previously that Rickie C. was the father of R.C., and the caseworkers testified that no other person came forward as the father of R.C. during the proceedings.

¶ 3 The mother stipulated to shelter care for the minor and to the allegations in the petition that related to her conduct and substance abuse. One month into the proceedings, the trial court ordered that the State exercise due diligence in an effort to serve respondent with a summons in the matter. The trial court also gave the State leave to publish as to respondent and All Whom It May Concern. In December 2009, the trial court again ordered that summons be served upon respondent and again granted leave to the State to publish for a court date of January 20, 2010. In January 2010 putative respondent and All Whom It May Concern were defaulted, having been served pursuant to publication, the trial court adjudicated R.C. neglected after testimony of the caseworker concerning the allegations, and the count against respondent was dismissed. The trial court proceeded to disposition and heard testimony from the same caseworker. Upon the conclusion of that testimony, the trial court found that both the mother and respondent were unfit and unable to care for R.C. The trial court also found that it was in the best interest of R.C. that his guardianship and custody be placed with DCFS, that DCFS should find a safe and suitable placement for the child, and allowed DCFS to place R.C. with a responsible family member. The minor was placed with a paternal aunt in Chicago.

¶ 4 On the first permanency planning date in July 2010, respondent appeared and was appointed counsel. While the testimony at the hearing indicated that respondent had not visited with R.C. while he was with a paternal aunt and that respondent had not participated in any services offered by DCFS, the permanency goal remained return home within 12 months. At the next permanency

planning hearing in January 2011, respondent did not appear, and the caseworker reported that there had been no contact with him or visits by respondent with the minor since the July 2010 hearing. The goal again remained return home within 12 months. The State indicated, however, that a legal screening of this case was forthcoming, and a petition for termination might be filed.

¶ 5 On January 4, 2012, the State filed a motion to terminate parental rights against both the mother, respondent, and All Whom It May Concern. Count I alleged that respondent abandoned the minor. Count II alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. Count III alleged that respondent deserted the minor. Count IV alleged that respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from him within nine months after an adjudication of neglected minor. Count V alleged that respondent failed to make reasonable progress toward the return of the minor to him within nine months after an adjudication of neglected minor. Count VI alleged that respondent failed to make reasonable progress toward the return of the child to him during any nine-month period after the end of the initial nine-month period following the adjudication of neglected minor. Count VII alleged that respondent had shown evidence of intent to forego his parental rights, whether or not the child was a ward of the court, (1) as manifested by his failure for a period of 12 months to visit the child, communicate with the child or court agency, although able to do so and not prevented from doing so by an agency or court order or to maintain contact with or plan for the future of the child, although physically able to do so. Only one count was stated against All Whom It May Concern, and it alleged that the individual failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare.

¶ 6 On February 23, 2012, the trial on the State's motion for termination went forward. The trial

court had previously allowed publication against All Whom It May Concern on the motion for termination, and counsel for respondent and for the State also reported to the court that they had sent notices to all previous addresses that were known for respondent and one letter sent by certified mail was actually signed for by someone, but not by Rickie C., at one of the known addresses. Respondent's court-appointed counsel indicated that she had received no communication and had no contact with respondent since September 2011. The State reported to the trial court that she knew that respondent was aware of the hearing and court date because during a phone call to the mother, Danielle M., respondent was present and the caseworker advised him. However, the caseworker did not receive any other information concerning his whereabouts. Respondent's counsel requested a continuance, but that motion was denied and the trial court heard testimony from two witnesses.

¶ 7 One agency witness testified that she made at least three different searches to find respondent. Once when respondent appeared in court, she attempted to make an appointment to discuss the permanency planning report and the cooperation order. Respondent never made an appointment; he did not comply with any of the services that were recommended; and he had not scheduled a visit with R.C. by calling the agency. Furthermore, it was also her understanding that, even though R.C. was placed with respondent's sister and her husband, respondent had made no effort to visit R.C. Finally, the caseworker indicated that respondent had come to the courthouse in September 2011 when his other children's cases were scheduled, but he never entered the courtroom and left without checking in with the court.

¶ 8 A second agency caseworker testified about R.C.'s current circumstances. By the time of this hearing, R.C. was approximately two and one-half years of age. He was making good progress in his foster home, and his foster parents had expressed an interest in adopting him. Because the foster

parents were related to respondent, they were able to make sure that R.C. had contact with his other siblings who had been placed with and were pending adoption by their paternal grandparents. This witness indicated that each time she had a visit with R.C. and his foster parents, she asked if respondent had made any requests to visit or made any actual visits with R.C. Each time, the foster parents reported that no attempts and no visits had occurred.

¶ 9 After the counsel for the respective parties offered closing comments, the trial court entered detailed findings. After repeating that All Whom It May Concern had been defaulted and that respondent failed to appear after the State and his own counsel had made many diligent efforts to contact him, the trial court found that the State had proved all of the counts alleging unfitness against respondent and the one count against All Whom It May Concern by clear and convincing evidence. The trial court also found that the State had proved by a preponderance of the evidence that it was in R.C.'s best interest that the parental rights of respondent and All Whom It May Concern be terminated. An order was duly entered ending the trial court proceedings on March 9, 2012. Respondent's notice of appeal was filed on March 28, 2012, by his court-appointed trial counsel. Two addresses were noted for respondent; one was the Winnebago County jail and the other as 128 Cameron Ave, Apt 3B, in Rockford. The latter address was one that had been used to reach respondent earlier in the proceedings.

¶ 10 Pursuant to *Anders v. California*, 386 U.S. 378 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), appellate counsel now moves to withdraw, stating that he has read the record and found no issue that warranted relief in this case. Appellate counsel has filed a memorandum of law in support of his motion. Counsel represents that he has mailed respondent a copy of the motion to withdraw. The clerk of the court has also notified respondent of the motion by letter dated May 5,

2012, and informed him that he would have 30 days to respond. Respondent has not submitted a reply to the motion, and the time to do so has expired.

¶ 11 Appellate counsel notes in his memorandum that respondent could attempt to present an argument concerning the adequacy of service, summons, and notice under the standards announced in *In re Haley D.*, 2011 IL 110886, and *In re Dar C.*, 2011 IL 111083. However, appellate counsel further notes that the facts and circumstances in those cases can easily be distinguished from the facts and circumstances in this case. We agree. In *Haley D.*, no diligent efforts were made to locate the father. In the second case, the State had the respondent father's address as a result of a separate but contemporaneous child support case. Therefore, when the State indicated that it could not locate the respondent father in the termination case, that representation was not correct. In this case, however, diligent efforts were made to locate, serve and notify respondent. On one occasion, an unsuccessful service return at the 128 Cameron address noted that respondent was avoiding service. On another occasion, respondent came to the courthouse but left before the case was called into the courtroom. On yet other occasions, respondent appeared during a hearing; spoke with a caseworker who attempted to make an appointment with him; had someone else accept service for him; and spoke with the caseworker who relayed the information about the date and time of the termination hearing. There is no doubt that respondent had every opportunity to participate in these hearings for R.C. had he wished to do so, and his due process rights were protected.

¶ 12 Appellate counsel next asserts in his memorandum that respondent cannot overcome the finding of unfitness based upon his failure to maintain a reasonable degree of interest, concern, or responsibility as to R.C.'s welfare. We agree. See *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40 (stating that, although section 1(D) of the Adoption Act sets forth numerous grounds under which

a parent may be found unfit, any one of the grounds, if properly proven, is sufficient to enter a finding of unfitness). The evidence before the trial court was clear that respondent made no effort to visit R.C. either with the blessings of the agency or directly with the consent of his sister, the foster placement. There was no evidence that respondent cooperated with any of the services recommended by DCFS or made any effort to respond to the various permanency planning recommendations. While on at least three occasions the record reflects that respondent visited the mother in the courthouse hall and at another location and asked about R.C., those inquiries do not come close to showing any reasonable degree of interest, concern, or responsibility as to R.C.'s welfare. The trial court's findings were not against the manifest weight of the evidence. See *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 68 (2005) (stating that the court will reverse a trial court's finding of unfitness only if it is against the manifest weight of the evidence).

¶ 13 Finally, appellate counsel asserts in his memorandum that respondent cannot credibly argue that it is in the best interest of R.C. to wait any longer for him to attain stability and be in a place to competently and reasonably care for R.C. Again, we agree. R.C. had been in foster care for his entire life (*i.e.*, more than two years) at the time of the termination order, and that placement was with one of respondent's siblings and her husband. The evidence established that the foster parents had consistently made and attended well-baby doctor appointments, kept R.C. in touch with his older siblings who were in foster care with respondent's parents, provided stability and affection for R.C., and expressed a serious intent to adopt R.C. if approved. At the same time, the evidence was clear that respondent had not visited with R.C., provided any support for R.C. or made any effort to cooperate with court orders to regain custody of R.C. Finally, the caseworker testified that R.C. and the foster parents had established a strong family bond. The positive information from R.C.'s foster

placement clearly established by a preponderance of the evidence that it was in the best interest of R.C. to terminate the parental rights of respondent.

¶ 14 While termination of parental rights is a harsh and final result, the trial court and this court each have an obligation to work toward security and stability for the minors who appear before us. Furthermore, once a determination of parental unfitness is declared, a “parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Accordingly, we hold that the trial court’s finding that it was in the best interest of R.C. to terminate respondent’s parental rights was not against the manifest weight of the evidence. See *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32 (2007) (a trial court’s best interest finding will not be reversed unless it is against the manifest weight of the evidence).

¶ 15 After carefully examining the record, the motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 16 Affirmed.