

2012 IL App (2d) 120767-U
No. 2-12-0767
Order filed December 7, 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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|--|---|-------------------------------|
| <i>In re</i> TYRONE S. and TYRA S., Minors |) | Appeal from the Circuit Court |
| |) | of Winnebago County. |
| |) | |
| |) | Nos. 09-JA-335 |
| |) | 09-JA-336 |
| |) | |
| (The People of the State of Illinois, |) | Honorable |
| Petitioner-Appellee, v. Javela W., |) | Mary Linn Green, |
| Respondent-Appellant). |) | Judge, Presiding. |

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

Held: Counsel's motion to withdraw granted where no issues of arguable merit were presented; the trial court's finding that respondent was shown to be unfit by clear and convincing evidence was not against the manifest weight of the evidence; the trial court's finding that the State proved by a preponderance of the evidence that it was in the best interests of the minors that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 1 Respondent, Javela W., appeals from the trial court's order entered June 29, 2012, finding her an unfit parent and terminating her parental rights. Respondent timely appealed, and the court appointed private counsel to represent her.

¶ 2 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel moves to withdraw. In his motion, counsel states that he has thoroughly reviewed the record and determined there are no non-frivolous issues for appeal. Counsel has advised respondent of his opinion. Counsel supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why these issues lack arguable merit. Respondent has not responded, and the time to respond has expired. We agree that the appeal presents no issues of arguable merit.

¶ 3 This appeal involves two minors: Tyrone S., born October 9, 1999, and Tyra S., born October 12, 2003. Respondent is their biological mother. In September 2009, neglect petitions were filed alleging three counts of neglect as to each minor. On January 27, 2010, respondent stipulated to count I of both neglect petitions, which alleged that the minors were neglected in that respondent had a substance abuse problem which prevented her from properly parenting the minors, thus placing them at risk of harm. Counts II and III of each petition were dismissed on the State's motion. The minors were adjudicated neglected and custody and guardianship were granted to the Illinois Department of Children and Family Services (DCFS).

¶ 4 At a permanency review on August 3, 2010, Nina Campbell, Lutheran Social Services caseworker testified that Tyrone was in traditional foster care with a family. She testified that he was developmentally delayed in that he was a "slow learner." She further stated that Tyra had been placed in a different home because she had been abused in the foster home by Tyrone.

¶ 5 Campbell further stated that respondent had weekly supervised visits with the minors. Campbell stated that at these visits, there were "a lot of outbursts in the office, talking to the children about the case and the investigation ***, a lot of crying, lots of walking out of the visits, a lot of stopping the visits early to leave." Respondent had been asked to participate in parenting classes but

had been dropped from the program. She was also asked participate in substance abuse assessment and treatment but was dropped for “behaviors and nonattendance and outbursts and tantrums ***.” She was not allowed back on the property at Rosecrance Treatment Center because of her outbursts. She was also dropped from individual counseling for non-attendance. As for mental health treatment, she was prescribed medication for depression and sleeping medication, but was not compliant regarding taking the medication on a regular basis. She completed a protective parenting assessment and was on a waiting list for inpatient treatment with the Women’s Treatment Center in Chicago. She also had tested positive for cocaine in random drug drops.

¶ 6 Campbell stated that the recommended goal was to return home. The trial court found that it was in the best interest of the minors that the permanency goal of return home within 12 months be maintained, and it also found that DCFS, through its contracting agency, had made reasonable efforts, toward the minors’ return home. However, the parents had not.

¶ 7 On February 1, 2011, Campbell again testified. At that time, Tyrone was 11 years old and Tyra was 7 years old. Tyrone was in traditional foster care and Tyra was in specialized care through Illinois Mentor. Tyra was receiving counseling at the Rockford Sexual Assault Counseling center and was seeing a doctor at the Mildred Berry Center in Rockford. She was in first grade, and had been diagnosed with “intermittent explosive disorder, ADD, ADHD and was bipolar.” She was taking Xanax and Seroquel on a regular basis. She had weekly supervised visitation for two hours with respondent. Campbell stated that respondent would become loud and cry and had “stormed out” of the visits.

¶ 8 Campbell testified that Tyrone was in fifth grade. He was receiving special education services and had an individualized education plan for reading and math. Tyrone was exhibiting behavioral problems at school and was disruptive.

¶ 9 Campbell stated that respondent's behavior and engagement in services was the same toward both children. At times she would become loud and cry during their visitations. On occasion she had threatened staff members. Respondent had not consistently complied with the random drug drops; they were either positive for cocaine or not taken at all. Campbell stated that respondent was being treated on an inpatient basis at New Leaf Treatment Center, but had not completed other services because her substance abuse needed to be addressed first.

¶ 10 The trial court then found that DCFS made reasonable efforts but that respondent had not. The goal remained return home within 12 months.

¶ 11 On August 9, 2011, another permanency review was held. Laurinda Wittenhagen, caseworker at Illinois Mentor testified regarding Tyra. She stated that Tyra had "severe mental health issues" and had been diagnosed with "bipolar disorder," ADHD and "explosive disorder." She was receiving Xanax and Seroquel on a regular basis. She had been placed in specialized foster care because she needed different services in place to help with her behaviors. She saw a Screening, Assessment and Support Services worker from Mildred Berry twice a month, a Youth Services Network therapist once a week, and a monthly doctor visit. She was in school at Fresh Start, in a program for children with developmental issues. Wittenhagen stated that Tyra had been moved several times due to her behaviors but that her medications had been increased and she had been discharged from the hospital a few days prior to the hearing. She had two-hour supervised visitation with respondent each week.

¶ 12 The trial court found that DCFS had made reasonable efforts for the period, but that respondent had not. The goals for both children were changed to substitute care pending court determination on termination of parental rights.

¶ 13 On November 15, 2011, a status hearing as held. Nina Campbell from Lutheran Social Services again testified. Tyrone's behaviors had "dwindled" over the prior few months. He was having more sexualized behaviors and had been referred to Mildred Berry. Heather Heritage, caseworker for Illinois Mentor, stated that Tyra had been placed at Hephzibah House in Oak Park for a 90-day diagnostic. She further stated that problems had arisen during communications between respondent and Hephzibah staff; therefore, the trial court ordered respondent to act appropriately with staff.

¶ 14 On March 6, 2012, a status hearing was held, after which the trial court entered an order restricting telephone calls from respondent to Tyra, due to respondent's continuing inappropriate behavior during both visitation and telephone calls.

¶ 15 On March 13, 2012, the State filed petitions to terminate parental rights of respondent as to both minors. Count I of each petition alleged that respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to each minor (750 ILCS 50/1(D)(b) (West 2010)); count II alleged that she failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from her within nine months after an adjudication of neglected or abused minor under section 2-3 of the Juvenile Court Act (750 ILCS 50/1(D)(m)(i) (West 2010)); count III alleged that she failed to make reasonable progress toward the return of the child to her within nine months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2010)); count IV alleged that she failed to make reasonable progress toward the return of the children to her

during any nine-month period after the end of the initial nine-month period (750 ILCS 50/1(D)(m)(iii) (West 2010)); and count V alleged that she failed to protect the child from conditions within their environments that were injurious to their welfare (750 ILCS 50/1(D)(g) (West 2010)).

¶ 16 On May 31, 2012, the court conducted an unfitness hearing. Officer Michael Schneider of the Rockford Police Department testified that he was on duty on February 23, 2010, in Rockford, when he and his partner observed respondent with a companion on a street corner. Because they were acting suspiciously, respondent was searched, whereupon they discovered seven small bags of cocaine and drug paraphernalia on her person.

¶ 17 Officer Michelle Krebs of the Rockford Police Department testified that on August 1, 2009, she answered a domestic battery call at respondent's residence. Krebs stated that respondent and her paramour, Tyrone Sharpe, had a verbal argument that turned into a physical altercation. Respondent told Krebs that Sharpe had tried to choke her, but he had fled the scene by the time Krebs arrived. Respondent also told Krebs that she had prior injuries caused by Sharpe. The trial court then admitted into evidence a certified copy of respondent's guilty plea and probation order, a certified Petition for an order of protection signed by respondent, certified copies of Sharpe's guilty plea and conviction, and copies of his criminal records.

¶ 18 Judy Lundberg, a DCFS investigator, testified that she interviewed respondent about an incident that was reported at Tyrone's school. Respondent had gone to Tyrone's school and, while there, hit him in the chest. Respondent told Lundberg that she was frustrated and she admitted to using crack cocaine. Respondent also told Lundberg that she had not been taking her prescribed medication. Respondent's behavior was "very escalated"; she was crying and yelling and at one

point threw herself on the ground. Lundberg also stated that respondent was indicated for inadequate supervision of Tyra and Tyrone, then five and nine years old, respectively.

¶ 19 Janette Grygiel, caseworker for Lutheran Social Services, testified that she had been Tyrone and Tyra's caseworker since March 2012. Based on her testimony, the trial court admitted four service plans initiated from March 2010 through September 2011.

¶ 20 Respondent testified on her own behalf. Respondent stated she attended inpatient substance abuse treatment but was unsuccessfully discharged after three months. She then stopped attending any substance abuse treatment. At the time of the hearing, she had never completed any services and did not have any housing. Her most recent cocaine use prior to the hearing was in April, 2012.

¶ 21 On June 27, 2012, the trial court found that the State had proved by clear and convincing evidence that respondent was unfit as alleged in counts I, II, III, IV and V of the petition for termination of parental rights. The court then proceeded to the best interests hearing.

¶ 22 Janette Grygiel from Lutheran Social Services testified that Tyrone had been placed in a traditional foster home since September 2009. Tyrone's psychological assessment, which was completed on June 21, indicated that he had significant special needs with an IQ of 44. Grygiel testified that Tyrone's functioning level needed to be monitored, and that at some point he would need a guardian or some sort of assisted living to function. He needed stability, 24-hour supervision, and guidance throughout his day. Tyrone's weekly visits with respondent upset him and interfered with that stability. One reason that the visits upset him was that respondent and Sharpe would argue and yell in front of Tyrone. Grygiel opined that, considering all of Tyrone's special needs, respondent's developmental level and her ability to care for Tyrone, it was in Tyrone's "best interests to have parental rights terminated in order to seek the appropriate setting for him to be productive."

¶ 23 Grygiel testified that Tyra was more aggressive and had more angry outbursts. She opined that respondent did not have the ability to provide for Tyra “because of mental delays and issues herself.” Tyra was placed at Hephzibah residential facility in specialized foster care. Grygiel stated that her ultimate goal was “to be stepped down back into a treatment level foster home.”

¶ 24 Respondent testified that she had been visiting consistently when she was able. In April 2012, she was incarcerated for two weeks and was unable to visit, and other times she had conflicting “appointments.” She denied arguing with Sharpe in front of Tyrone. She was in treatment at Rosecrance four afternoons per week and had been “clean” for two months. She was living with Sharpe, but had applied for her own housing. She and Sharpe had a relationship since 1989, and he had recently left his substance abuse treatment because “he got irritated and left.”

¶ 25 Regarding Tyrone, respondent testified that he was a slow learner, that she received his report card, and that she was unaware of any medications he was taking. Regarding Tyra, respondent testified that she had not been given any information but that Tyra had “ADHD” and was taking Ritalin. Respondent summarized her reasons for thinking it would not be good for her parental rights to be terminated as follows: “both my kids would be really hurt if they don’t get to see me.”

¶ 26 The trial court then found that the State had met its burden and proved by a preponderance of the evidence that it was in the best interests of the minors to terminate respondent’s parental rights as to both Tyrone and Tyra. Respondent timely appealed.

¶ 27

ANALYSIS

¶ 28 The Juvenile Court Act provides a bifurcated system in which parental rights can be terminated. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008); 705 ILCS 405/2-29(2) (West 2008). First, the State must show by clear and convincing evidence that the parent is unfit. *In re*

Konstantinos H., 387 Ill. App. 3d at 203. “A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act [750 ILCS 50/1(D) (West 2010)].” *Id.* at 203-04. “Where a challenge is made to the sufficiency of the evidence underlying a trial court's finding of unfitness, a reviewing court will reverse such finding only where it is against the manifest weight of the evidence.” *In re C.W.*, 199 Ill.2d 198, 211 (2002).

¶ 29 The State must then show that the best interests of the children are served by severing the parental rights. *Konstantinos H.*, 387 Ill. App. 3d at 203. The trial court's decision to terminate parental rights involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). Thus, the trial court's factual findings will not be disturbed unless they are contrary to the manifest weight of the evidence. *Id.* “A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented.” *Id.* Finally, because each case involving parental unfitness is *sui generis*, we do not make factual comparisons to other cases. *In re J'America B.*, 346 Ill.App.3d 1034, 1046 (2004).

¶ 30 Unfitness

¶ 31 Count II of each petition for termination of parental rights alleged that respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from her within nine months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2010)). Counsel on appeal points out that respondent made no effort to engage in or complete services, and was arrested for cocaine possession. She subsequently pled guilty to the amended offense of attempted unlawful possession of cocaine and was placed on a term of probation. When she completed the drug screens required, they all came back positive for cocaine. While she had

regularly visited with Tyrone and Tyra, she was continuously disruptive during the visitations. She frequently left the visits early. She also often had inappropriate conversations with Tyra and Tyrone during these visits and had to be redirected. The record shows that both children exhibited negative reactions to visitation with respondent, to the point where Tyra's visitations had ceased. Respondent was repeatedly dropped from programs for either disruptive behavior or for non-attendance. Further, the record supports the trial court's findings that both Tyrone and Tyra had significant and serious needs that required highly specialized care.

¶ 32 Reviewing the evidence in accordance with the applicable standard of review, we conclude that the trial court's unfitness finding was not against the manifest weight of the evidence. Since there is sufficient evidence to satisfy this statutory ground, we need not consider other findings of parental unfitness. See *Katrina R.*, 364 Ill. App. 3d at 842.

¶ 33 Best Interests

¶ 34 The constitutionally proper standard at a best-interest hearing is proof by a preponderance of the evidence, which adequately ensures the level of certainty about the court's factual conclusions necessary to satisfy due process. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). "[T]he question before us is not what we would have done in the first instance if we had been acting as the trial court and this evidence was presented before us. The question for us, as a reviewing court, is whether the trial court's decision was against the manifest weight of the evidence." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. Thus, our standard of review of the trial court's decision is whether the findings were contrary to the manifest weight of the evidence. *Id.*

¶ 35 In the context of a best-interest determination, section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2008)) sets forth a number of factors to consider within "the

context of the child's age and developmental needs." These factors include the physical safety and welfare of the child, including food, shelter, health and clothing; the child's background and ties, including familial, cultural, and religious; the child's wishes and long-term goals; and the child's need for permanence, which includes his or her need for stability and continuity of relationships with parent figures and with siblings and other relatives. We are guided by the Illinois Supreme Court in *C.W.*, 199 Ill. 2d at 217, which stated, "at the second stage of the termination hearing, at which the court considers whether it is in the best interest of the minor that parental rights be terminated, *** the full range of the parent's conduct can be considered."

¶ 36 The evidence presented to the trial court was clear and convincing that respondent did not complete any services, had no appropriate housing, and, very significant in our view, her most recent drug use was a mere eight weeks prior to the best interest hearing. Respondent gave random drug screens; at one permanency review, the DCFS caseworker testified that, with the exception of one drug screen, all of respondent's drug drops were positive for cocaine. Nothing in the record suggests that respondent was, or would be, able to provide a safe and secure environment for Tyrone or Tyra. Neither was there any evidence that respondent would be able to provide for food or clothing. Both Tyrone and Tyra had been in foster care for approximately three years, both had significant special needs, and the caseworker testified that it was in their best interests to be in long-term foster care. Tyrone would become upset when respondent's visits were disruptive; respondent would fight with Sharpe during visits, arrive under the influence of drugs, or cancel visits. The caseworker further opined that respondent would not be able to provide stability for Tyrone in the near future, if ever, due to her issues and Tyrone's needs. The trial court's decision to terminate respondent's parental rights was in the best interests of the minors.

¶ 37 After examining the record, the motion to withdraw, the memorandum of law, and the response, we agree with counsel that this appeal presents no issue of arguable merit. The termination of respondent's parental rights was not against the manifest weight of the evidence, because the State proved, by clear and convincing evidence, that she failed to maintain a reasonable degree of interest, concern or responsibility in the minors' welfare, as alleged in count I of the petition to terminate her parental rights, and, by a preponderance of the evidence, that termination of her parental rights was in the best interests of the minors. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 38 Affirmed.