2013 IL App (2d) 130060-U
Nos. 2-13-0060 & 2-13-0074 cons.
Order filed May 28, 2013

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

In re DON'NASIA L., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 11-JA-129
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Stephanie W., Respondent-	)	Mary Linn Green,
Appellant).	)	Judge, Presiding.

In re DON'NASIA L., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 11-JA-129
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(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Donterio L., Respondent-	)	Mary Linn Green,
Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: In appeal No. 2-13-0060, counsel's motion for leave to withdraw pursuant to *Anders v. California* is granted. In appeal No. 2-13-0074, counsel's motion for leave to withdraw is also granted. Order terminating each parent's parental rights affirmed.

¶ 2 In these consolidated appeals, Stephanie W. and Donterio L. appeal from the trial court's orders finding them unfit and terminating their parental rights with respect to their daughter Don'nasia L. Counsel for Stephanie W. and counsel for Donterio L. each move to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). For the following reasons, we grant both motions and affirm the trial court's order terminating each parent's parental rights.

¶ 3 I. APPEAL NO. 2-13-0060

¶ 4 In appeal No. 2-13-0060, Michael Raridon, Stephanie's court-appointed counsel, moves for leave to withdraw as counsel pursuant to *Anders*. The motion, which is accompanied by a supporting brief, states that counsel has reviewed the entire record and concluded that there are no arguable bases for relief. Copies of the motion and brief were sent to Stephanie W., and she was advised that she could submit any points in support of her appeal. She has not responded. The motion was taken with these consolidated cases for disposition. For the following reasons, we conclude that there are no issues of arguable merit and we allow counsel's motion and affirm the trial court's judgment as it pertains to Stephanie W.

¶ 5 Don'nasia was born on April 18, 2011. Stephanie (age 25) and Donterio (19) are her biological parents. On April 21, 2011, the State filed a three-count neglect petition as to Don'nasia L. after DCFS received a hotline call that Stephanie W. had given birth. (Don'nasia was not placed with Donterio because he was incarcerated.) On April 20, 2011, DCFS took protective custody of Don'nasia before she was released from the hospital. About one month later, Don'nasia was placed in a traditional foster home with her four siblings.

¶ 6 On April 21, 2011, both parents waived their right to a shelter care hearing and the matter was continued for a pretrial conference. By the June 10, 2011, pre-trial conference, Donterio was

incarcerated and no agreement was reached. On July 14, 2011, Stephanie appeared at the adjudication hearing and factually stipulated to count I of the neglect petition (*i.e.*, that the minor is a neglected minor in that her environment is injurious to her welfare in that her siblings were removed from their mother's care and mother has failed to cure the conditions that caused the removal of the minor's siblings, thereby placing the minor at risk of harm (705 ILCS 405/2-3(1)(b) (West 2010)). Both parties stipulated as to the disposition that Don'nasia be placed under DCFS's guardianship. Both parents were to cooperate with services, including drug testing, taking all assessments, signing releases, and following up with any recommended treatment.

¶ 7 On January 17, 2012, the first permanency hearing was held, and Stephanie did not appear. She had not had contact with her attorney. Caseworker Michelle Garnhart of Children's Home and Aid Society of Illinois stated that Stephanie had not participated in services for "quite some time." She further testified that Don'nasia was doing well in her foster home with her siblings and was receiving medical treatment for an eye condition. Stephanie had not had any visitation since the end of September 2011. Stephanie was to provide drug screens, attend parenting classes and individual counseling, and obtain housing and financial stability. While six completed drug screens were negative for drugs, three uncompleted ones were presumed positive. Stephanie had started parenting classes in September, but, in October, was unsuccessfully discharged because she had failed to consistently attend the classes. Individual counseling, which started in August, had also been terminated due to her non-attendance at the four scheduled sessions. Visitation had ceased, and Stephanie's housing and employment status were unknown. (Donterio was incarcerated at this time.) On cross-examination, Garnhart testified that Stephanie might have transportation problems (Garnhart provided her with bus passes; due to her involvement with Stephanie's last four children,

Stephanie knew how to obtain bus passes from Garnhart). The trial court found that Stephanie had not made reasonable efforts.

¶ 8 The second permanency review was held on July 17, 2012. Stephanie did not attend the hearing. Garnhart testified that she had not been contacted by Stephanie, except for several messages, the last of which was in March (Stephanie requested visitation)[1] and that she had not spoken with her since September 30, 2011, during her last visit with Don'nasia. Stephanie did complete, via mail, a January 5, 2012, drug "drop." Garnhart had mailed (on January 18 and May 11) letters to Stephanie's last known address, where she had lived with her mother and siblings. (Donterio had been transferred to segregation in a maximum security institution due to disciplinary problems.) Garnhart testified that Don'nasia's vision issue was being addressed, and a developmental screen reflected that she was developmentally on target. The trial court found that Stephanie (and Donterio) had not made reasonable efforts or progress and determined that the goal should be changed to substitute care pending a decision on termination of parental rights.

¶ 9 On September 26, 2012, the State moved to terminate Stephanie's (and Donterio's) parental rights. It alleged in four counts that Stephanie had failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to Don'nasia's welfare; (2) make reasonable efforts to correct the conditions that were the basis for the removal of the child within nine months after the adjudication of neglect; (3) make reasonable progress to return the child to her within nine months of adjudication; and (4) visit, communicate with the agency, or maintain contact with or plan for the child, although physically able to do so.

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[1]When Garnhart returned Stephanie's calls, the phone was either disconnected or she was unable to leave a message.

¶ 10 The fitness hearing commenced on October 31, 2012. Stephanie appeared at the hearing. The State submitted the investigative file and then elicited testimony from Donterio. The State's second witness was Garnhart, who testified that Don'nasia, age 18 months, had been in placement since she was one month old. Garnhart had been Don'nasia's caseworker for 18 months and Stephanie's caseworker for 4 1/2 years. Garnhart testified that Stephanie visited Don'nasia up until the first Administrative Case Review (ACR) (which consists of service plan preparation and review) in the case in August 2011 (Stephanie did not attend the two subsequent ACRs), but then completely stopped visiting after September 2011. Stephanie did not attend two subsequent case reviews or participate in the four family meetings to plan for services for Don'nasia. Stephanie had not contacted Garnhart since September 2011, although Garnhart attempted to contact her through several "diligent searches" during that time. Garnhart stated that she had attempted to notify Stephanie at her last known address, which was her mother's address, because she had no other valid address to use. Garnhart had also tried phone contact, but did not receive answers on the numbers she called or the phone was disconnected. She identified the State's exhibits (Nos. 2 (July 2012 plan), 3 (February 2012 plan), and 4 (August 2011 plan)) as the service plans prepared by herself and her agency for Don'nasia and the family. (The exhibits were admitted into evidence.)

¶ 11 On cross-examination, Garnhart testified that she attempted to notify Stephanie of the ACRs and service plans by sending certified mail in care of her mother's address, but that only one of those was signed by Stephanie's mother. She also sent notices to the other addresses she obtained for Stephanie, but not via certified mail. Garnhart further testified that, in May or June 2011, Stephanie completed a substance abuse assessment, which did not recommend services. She also completed a domestic violence/partner abuse assessment and started parenting classes at the Mother House, a

domestic partner abuse center, but she did not complete those services. Stephanie was also to complete individual counseling and random drug testing, but the latter was made impossible by Stephanie's lack of contact since September 2011. (Before September 2011, the drug screenings occurred about twice per month.) Stephanie had attempted to contact Garnhart via phone over the last three months, but they had never actually spoken. There were periods of up to six months when Stephanie did not call. The last contact was a phone call in September 2012, leaving a message asking how to stop the adoption. Garnhart last sent a letter to Stephanie's address in May and tried to call her within one month of the hearing.

¶ 12 Stephanie did not offer any evidence or testimony. On January 2, 2013, the trial court found Stephanie unfit as to all four counts in the State's motion to terminate parental rights.

¶ 13 The best interests hearing commenced on January 2, 2013. Garnhart submitted her report without objection. She testified that Don'nasia had four biological siblings by Stephanie and parental rights had been terminated as to all four children (in April 2010, as to the three oldest siblings and in January 2011, as to the fourth sibling). The children resided in the same foster home as Don'nasia, and the four siblings had already been adopted by the foster parents. The foster mother had bonded to Don'nasia, and Don'nasia had bonded to her siblings and her foster mother. Don'nasia's vision impairment issue was being medically addressed, and the foster mother was responsible for taking Don'nasia to all of her treatments. Neither Stephanie nor Donterio had visited Don'nasia in the last 15 months. Garnhart opined that it was in Don'nasia's best interests to stay in the foster home with her siblings and foster family and that parental rights be terminated. On cross-examination, Garnhart testified that Don'nasia had only known this home for all but the first month

of her life and was bonded to her siblings in that home. Since the last court date, Stephanie had not contacted Garnhart. Stephanie offered no testimony.

¶ 14 The trial court found that it was in Don'nasia's best interests to terminate Stephanie's (and Donterio's) parental rights.

¶ 15 In his motion to this court, Stephanie's counsel argues that Stephanie cannot overcome the finding of unfitness as to count I of the State's motion: failure to maintain a reasonable degree of interest, concern, or responsibility as to Don'nasia's welfare. 750 ILCS 50/1(D)(b) (West 2012). We agree.

¶ 16 A parent's right to raise his or her biological child is a fundamental liberty interest, which is protected by due process. *In re M.H.*, 196 Ill. 2d 356, 362 (2001). Proceedings to terminate parental rights are governed principally by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). Generally, under the Juvenile Court Act, where a child is adjudicated abused, neglected, or dependent and the State seeks to free the child for adoption, unless the parent consents, the State must first establish that the parent is "unfit" under one or more of the grounds set forth in the Adoption Act. 705 ILCS 405/2-29(2) (West 2012); 750 ILCS 50/1(D) (West 2000). The State must prove the allegation of unfitness by clear and convincing evidence. *M.H.*, 196 Ill. 2d at 365. If the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). The burden of proof upon the State is to show by a preponderance of the evidence that termination is in the minor's best interests. *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 17 The grounds for finding parental unfitness under section 1(D) of the Adoption Act stand independently of each other. See *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000); see also *In re C.L.T.*, 302 Ill. App. 3d 770, 772 (1999) ("a finding of parental unfitness may be based on evidence sufficient to support any *one* statutory ground, even if the evidence is not sufficient to support other grounds alleged" (emphasis in original)). Subsection (b) provides that a parent's "failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" is a ground for finding the parent unfit. 750 ILCS 50/1(D)(b) (West 2012). Since this language is in the disjunctive, any of these three elements may be considered on its own as a basis for unfitness. *C.L.T.*, 302 Ill. App. 3d at 773. A trial court must focus on a parent's reasonable efforts and not on his or her success, and must consider any circumstances that may have made it difficult for the parent to visit, communicate with, or otherwise show interest in the child. *E.O.*, 311 Ill. App. 3d at 726-27; see also *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994) (court should examine parent's conduct in context of his or her circumstances, including his or her poverty, transportation options, whether visits were discouraged, and effect of personal problems). However, our courts have repeatedly concluded that a parent is not fit merely because he or she has demonstrated *some* interest or affection toward the child; rather, the parent's interest, concern, and responsibility must be reasonable. *E.O.*, 311 Ill. App. 3d at 727. Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under subsection (D)(b). *T.D.*, 268 Ill. App. 3d at 246; *In re M.C.*, 201 Ill. App. 3d 792, 797 (1990). A trial court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re Grant M.*, 307 Ill. App. 3d 865, 868 (1999).

¶ 18 Upon review of the record, we agree that Stephanie's appeal presents no issues of arguable merit as to the fitness determination. Here, as counsel argues, the evidence reflected that Stephanie did not maintain concern or interest or responsibility for Don'nasia for any period after August 2011. She had no contact with her child for about one year preceding the State's motion to terminate her parental rights. Further, Stephanie did not contact the caseworker, or, if she did, was not persistent in doing so. Stephanie did not present any testimony at the unfitness hearing. The service plans admitted into evidence reflect that Stephanie did not accomplish any major goal during the period after August 2011. Stephanie was discharged from domestic violence and substance abuse counseling in the fall of 2011 due to non-attendance. Further, she did not provide any financial support for Don'nasia, nor did she maintain any interest in her well-being for her eye condition, her educational progress, or her placement. Finally, there is no evidence of any cards, letters, gifts, material support, or other contacts between Stephanie and Don'nasia.

¶ 19 As to the best interests determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory factors listed in section 1-3(4.05) of the Juvenile Court Act:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> > (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 20 The evidence reflects that Don'nasia has been in foster care since a few days after her birth. She lives with her four siblings who have already been adopted, and she has attached to them and to the foster parents. Further, the foster parents, who are also tending to Don'nasia's medical needs, desire to adopt her and to give her a permanent home. The evidence further reflects that Don'nasia is provided with safety, stability, security, and continuity of affection and attachment with family members. As counsel notes, Stephanie offered no evidence that she could provide a home for Don'nasia at any time in the foreseeable future.

¶ 21 We grant counsel's motion for leave to withdraw and affirm the trial court's order terminating Stephanie's parental rights.

¶ 22 II. APPEAL NO. 2-13-0074

¶ 23 In appeal No. 2-13-0074, Nicholas Meyer, Donterio L.'s court-appointed counsel, moves for leave to withdraw as counsel pursuant to *Anders*. The motion, which is accompanied by a supporting brief, states that counsel has reviewed the entire record and concluded that there are no arguable bases for relief. Copies of the motion and brief were sent to Donterio L., and he was advised that he could submit any points in support of his appeal. He has not responded. The motion was taken with these consolidated cases for disposition. For the following reasons, we conclude that there are no issues of arguable merit and we allow counsel's motion and, thus, affirm the trial court's judgment as it pertains to Donterio L.

¶ 24 On April 21, 2011, the State filed a three-count neglect petition as to Don'nasia L. after DCFS received a hotline call that Stephanie W. had given birth on April 18, 2011. Don'nasia was not placed with Donterio because he was incarcerated in the Winnebago County jail based on charges of aggravated battery with a firearm, a class X felony. On April 20, 2011, DCFS took protective custody of Don'nasia before she was released from the hospital. About one month later, Don'nasia was placed in a traditional foster home with her siblings.

¶ 25 Donterio appeared from in custody at the shelter care hearing and was provided a copy of the neglect petition and arraigned as to his rights. Both parents waived their right to a shelter care hearing. On May 3, 2011, Donterio participated in an integrated assessment at the Winnebago County jail. He was recommended for the following services: drug screens, individual therapy, psychiatric evaluation, anger management, parenting, and GED classes, and to secure employment and safe and stable housing.

¶ 26 On July 14, 2011, Donterio appeared from in custody at the adjudication hearing and factually stipulated to count I of the neglect petition. Both parties stipulated as to the disposition.

¶ 27 On January 17, 2012, the first permanency hearing was held, and Donterio did not appear; he had been sentenced to the Department of Corrections prior to the hearing. (His court-appointed attorney was unaware that Donterio had been transferred and did not have a writ of *habeas corpus* issued by the court to have him transferred to Winnebago County prior to the hearing.) During the first review period, Donterio did not have any visits with Don'nasia. According to Garnhart, Donterio was incarcerated for the previous six months. He did attend some bible classes, but had no contact with the caseworker other than signing releases. The trial court made no findings as to Donterio.

¶ 28 Donterio did not appear at the second permanency review hearing on July 17, 2012. His court-appointed counsel did not have the trial court issue a writ of *habeas corpus* prior to the hearing. During this period, the caseworker had no contact with Donterio. He did sign the releases the caseworker sent to him, but did not otherwise contact the caseworker through letters or telephone. Donterio also did not have any visits with Don'nasia during the second review period because he had been placed in segregation at the Department of Corrections; inmates in segregation are not allowed visits. Garnhart was unable to ascertain (due to the correction's counselor's refusal to divulge any information over the telephone) whether Donterio had been engaged in any services during this period. The trial court found that Donterio failed to make reasonable efforts or progress during the second review period. The court changed the goal from return home to substitute care pending termination of parental rights.

¶ 29 On September 26, 2012, asserting five counts, the State moved to terminate Donterio's parental rights as to Don'nasia. The State alleged that Donterio: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to Don'nasia's welfare; (2) failed to make reasonable

efforts to correct the conditions that were the basis for the removal; (3) failed to make reasonable progress toward the return of Don'nasia to him within nine months after the adjudication of neglect; (4) had shown evidence of his intent to forego his parental rights; and (5) is incarcerated as a result of a criminal conviction at the time the motion to terminate was filed; prior to incarceration, he had little or no contact with Don'nasia or provided little or no support for her; and his incarceration will prevent Donterio from discharging his parental responsibilities for a period in excess of two years after the filing of the termination motion. Donterio was present at the arraignment and pre-trial conference on September 26, 2012. The court continued the case to October 25, 2012, for a hearing on the State's motion.

¶ 30 On October 25, 2012, Donterio appeared at the hearing from in custody. He hired new counsel on the hearing date and moved to continue the hearing to allow additional time to prepare. The trial court granted the motion, and the hearing was continued to October 31, 2012.

¶ 31 The fitness hearing commenced on October 31, 2012. Donterio testified that he was in jail when Don'nasia was born, having been arrested on October 5, 2010, and that he has never had contact with Don'nasia. Donterio sent Don'nasia one card in December 2012, but had made no other attempts to contact or support her. He inquired as to her welfare one time (in September 2012). Donterio further testified that his anticipated parole date was November 15, 2015 (a July 18, 2012, Department of Corrections progress report states that Donterio's mandatory supervised release date is February 11, 2016). He was enrolled in GED classes, attended church, participated in anger management classes, and was on the waiting list for parenting classes. Donterio testified that he received letters from his caseworker every month, but never wrote her back and never called her,

even though he was able to write letters from prison. In 2011, he was transferred for disciplinary reasons from a medium security facility to a maximum security facility.

¶ 32 The State also called Garnhart, who testified that she had not received any written correspondence or phone calls from Donterio during the entire case. He did participate in an integrated assessment interview and signed releases. However, Donterio never inquired about Don'nasia or communicated any plans for her future, how to support her, or her placement. Garnhart testified that a critical decision was made that Donterio would not receive visitation with Don'nasia while he was in the Department of Corrections, partly because he was in segregation and partly because of issues contacting his counselor at the correctional facility. The agency's critical decision took into account the fact that Donterio did not ask for visitation until one month before the fitness hearing. Don'nasia's vision issues were mentioned in the service plans; neither parent inquired about her condition. The State also submitted the investigative report, service plans, and a certificate of conviction (reflecting that Donterio was convicted on July 28, 2011, for aggravated battery with a firearm, a class X felony).

¶ 33 The trial court found that Donterio was unfit as to all counts of the State's motion to terminate his parental rights.

¶ 34 On January 2, 2013, Donterio appeared at the best interests hearing. The State called Garnhart, who testified that Don'nasia is currently placed with her siblings in traditional foster care; her siblings had been adopted by Don'nasia's foster parents. Don'nasia had a normal sibling relationship with her biological siblings and her foster siblings. Don'nasia goes to her foster parents for all of her needs, and her foster parents provide for all of Don'nasia's needs. They have been her primary caregivers since she was one month old. Don'nasia identifies her foster placement as her

home, and her foster parents have committed to adopting her. Garnhart further testified that Don'nasia has no relationship with Donterio.

¶ 35 Donterio's attorney questioned Garnhart as to why DCFS did not place Don'nasia with Donterio's mother, Julia L. She responded that the agency made the decision to place Don'nasia with her siblings for several reasons, the primary one of which was that Julia L. had just been released from the Department of Corrections for a drug conviction prior to DCFS taking protective custody of Don'nasia. (Donterio never filed any appeal with DCFS concerning Don'nasia's placement.) The current foster parents have provided a permanency commitment and plan to adopt Don'nasia if she is freed for adoption.

¶ 36 The trial court took judicial notice of the evidence at the fitness hearing, as well as the court report filed on January 2, 2013. The court found that it was in Don'nasia's best interests to terminate Donterio's parental rights.

¶ 37 On appeal, counsel argues that Donterio's efforts to maintain a reasonable degree of interest, concern, or responsibility as to Don'nasia's welfare (750 ILCS 50/1(D)(b) (West 2012)) were not even minimal. We agree. A parent's incarceration does not excuse him or her from failing to contact his or her child while in custody. See *In re T.D., I.D., & L.B.*, 268 Ill. App. 3d 239, 248 (1994). As counsel notes, Don'nasia was taken into protective custody on April 20, 2011. Between April 2011 and January 2013, Donterio never had any contact with his daughter and he never made any attempt to contact her or support her (other than requesting visitation one month before the fitness hearing). With one exception (*i.e.*, a gift in December 2012), Donterio never sent Don'nasia any gifts, cards, or letters. Although he received correspondence from his caseworker every month, he never responded to her letters and never made any attempts to call her.

¶ 38 As to the trial court's best interests finding, counsel argues that the decision was not against the manifest weight of the evidence and that an appeal of the finding would be frivolous. We agree. An assessment of the statutory factors reflects that: (1) as to her physical safety and welfare, Don'nasia's foster parents provide for all of her needs and Donterio is not expected to be released from incarceration until late 2015; (2) as to her identity development, Don'nasia has been in her current placement since she was one month old, she lives there with her four biological siblings who have been adopted by the foster parents and with whom she has a normal sibling relationship, and she has never had contact with Donterio; (3) as to her background and ties, Don'nasia has never lived with her parents and has, again, never had contact with Donterio; thus, the only family she has known is her foster family; (4) as to her attachments, Don'nasia had bonded with her siblings and foster parents and goes to her foster parents for all of her needs and considers her foster placement her home; (5) as to her wishes, although she is too young to state them, she considers her foster placement her home; (6) the sixth factor is neutral because Don'nasia is too young to have community ties; (7) as to her need for permanency, her foster parents have committed to permanency through adoption and Donterio will be incarcerated until late 2015; (8) as to the uniqueness of every family and child, Don'nasia is fully integrated into her foster family and does not have any relationship with her biological parents; (9) as to the risk of substitute care, if Donterio's parental rights are not terminated, Don'nasia will remain in foster care indefinitely; Donterio and Stephanie have not demonstrated a commitment to returning their daughter to their care or that there is a time in the near future when they can provide for her needs; the foster parents have committed to permanency through adoption; and (10) as to the preferences of the persons available to care for the

child, the foster parents have committed to adoption, Donterio is not available due to his incarceration, and placement with Donterio's mother was ruled out due to her criminal background.

¶ 39 Counsel notes that Donterio's chief argument during the hearing was that he wanted Don'nasia placed with his mother. However, the matter of which adoptive placement is most suitable is not the issue at a best interest hearing; the decision to terminate a parent's parental rights is based on the determination that freeing a child for adoption would be in his or her best interests. *In re D.M.*, 336 Ill. App. 3d 766, 775 (2002). Although the availability of an adoptive home is a consideration, it is not listed as a factor to be considered by the court at the best interests stage.

¶ 40 We grant counsel's motion for leave to withdraw and, thus, affirm the trial court's order terminating Donterio's parental rights.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, in appeal No. 2-13-0060, we grant counsel's motion for leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and we affirm the trial court's order terminating Stephanie W.'s parental rights. In appeal No. 2-13-0074, we grant counsel's motion for leave to withdraw pursuant to *Anders*, and we affirm the trial court's order terminating Donterio L.'s parental rights.

¶ 43 Motions granted and judgments affirmed.