

2013 IL App (2d) 130440-U  
No. 2-13-0440  
Order filed September 30, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23(c) 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> YARA F. and ANDEL F. R. Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 11-JA-132
	)	10-JA-149
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. JESSICA F., Respondent-	)	Mary Linn Green,
Appellant).	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Zenoff and Jorgensen concurred in the judgment.

¶ 1 *Held:* The trial court's decision was not against the manifest weight of the evidence. We allowed the motion to withdraw and affirmed the decision of the trial court.

**RULE 23 ORDER**

¶ 2 Respondent, Jessica F., appeals the trial court's decision to terminate her parental rights to her minor children, Yara F. and Andel F.R. Appellate counsel moves to withdraw. In his motion, appellate counsel states that he read the record and found no issue of arguable merit. See *Anders v. California*, 386 U.S. 738 (1967); Also See *In re Austin C. and Alexis C., Minors*, 353 Ill. App. 3d 942, 945 (2004). Counsel supports his motion with a memorandum of law providing a statement of facts, a potential issue, and an argument as to why the issue lacks arguable merit. *Id.* We advised

respondent that she had 30 days to respond. That time is past, and respondent has not replied. For the reasons explained below, we grant counsel's motion to withdraw and affirm the trial court's decision.

¶ 3 On May 12, 2010, the State filed a neglect petition pursuant to the Juvenile Court Act of 1987 ( Juvenile Court Act) (705 ILCS 405/ 2-3) (West 2010)). The petition alleged that Andel F.R. was a neglected minor. On April 22, 2011, the State filed a neglect petition pursuant to the Act alleging that Yara F. was a neglected minor. Respondent and both fathers were provided notice of the proceedings.

¶ 4 On July 16, 2010, respondent stipulated to a count of neglect regarding Andel F. R. Andel F.R. was adjudicated neglected and made a ward of the court. On July 20, 2011, respondent stipulated to the count of neglect regarding Yara F. Yara F. was also adjudicated neglected and made a ward of the court. Guardianship and custody of each minor were awarded to the Illinois Department of Children and Family Services (DCFS). The trial court set its goal as "return home within 12 months."

¶ 5 On February 1, 2012, the trial court found that respondent failed to make reasonable efforts toward the return home goal. On July 23, 2012, the trial court found that respondent failed to make reasonable efforts or reasonable progress toward the return home goal. Specifically, the trial court noted that respondent had not kept in contact with DCFS, had not completed mandated counseling, random drug screens, employment counseling, had not maintained housing, and had failed to maintain consistent visitation with the minors. The trial court changed its goal to "substitute care pending court determination of termination of parental rights."

¶ 6 On March 27, 2013, the trial held an unfitness hearing. Respondent did not attend the hearing, although testimony established that every conceivable effort was made to ensure that she was given notice. Andel F.R.'s father, who was incarcerated at the time, participated in the proceedings. Yara F.'s biological father was also given notice, but failed to appear. DCFS reports, admitted as evidence, showed that respondent had given birth to a total of seven children. Respondent's parental rights for her first five children were terminated. Of the five, three were adopted, and the remaining two were in the custody of their biological fathers. Testimony at the hearing established that respondent had not visited either Yara F. or Andel F. R. in excess of over a year, had not completed any of services required by her service plan, did not maintain contact with DCFS, and lacked housing and employment. Moreover, a DCFS caseworker testified that respondent had admitted to recently "smoking heroin," and had mentioned that she was prepared to relinquish her parental rights to the minors. Testimony established that Andel F.R. was diagnosed with autism but that respondent had not taken an interest in any of his medical treatments or appointments.

¶ 7 The trial court determined that respondent was unfit based upon a count of abandonment. Section 1(d)(a) of the Adoption Act provides that a parent may be found unfit for abandoning her child. 750 ILCS 50/1(d)(a) (West 2012). Abandonment means more than merely relinquishing custody of one's children; it requires the intent to forego parental duties and relinquish all parental rights. *In re Adoption of D.A.*, 222 Ill. App. 3d 73, 78 (1991). In the present matter, the trial court determined that respondent abandoned the minors because respondent had not visited them or engaged in of any the services necessary to have the minors returned to her care within 14 months prior to the unfitness hearing. Moreover, respondent did not attend the hearing and made no effort

to contact or respond to her attorney or DCFS regarding the status of her children or these proceedings.

¶ 8 On March 27, 2013, the trial court held a best interests hearing. Although respondent's attorney was present, respondent failed to appear. Andel F.R.'s biological father was present, on writ from a correctional institution where he was incarcerated. An attorney for Yara F.'s biological father was present, but Yara F.'s biological father was not in attendance. Attorneys for both respondent and Yara F.'s biological father informed the court that, after diligent efforts, their clients had failed to respond to them and each attorneys requested a continuance, which the trial court denied. The trial court heard testimony from Andel F.R.'s biological father, who testified that he believed he could care for his son after his parole and his completion of services, which, he testified, he was willing to complete. An agent for DCFS testified that it would take more than one year for Andel F.R.'s biological father to complete the services necessary to properly care for Andel F.R. Yara F.'s and Andel F.R.'s foster parents testified. Each expressed that they loved and cared for the minors, were prepared to deal with their needs, and wished to adopt and provide permanency for the children.

¶ 9 In closing arguments, the attorney representing respondent argued that the trial court should consider that respondent originally made efforts to visit the minors and to cooperate with court proceedings and further argued that her client was currently going through a difficult time. After reviewing the best interests factors, the trial court terminated the parental rights of respondent, as well as those of Yara F.'s biological father, and Andel F.R.'s biological father. Respondent timely appealed. Appellate counsel moved to withdraw.

¶ 10 The trial court is in the best position to judge the factual finding and credibility assessments necessary to deliver a decision terminating parental rights. *In re Tiffany M.*, 353 Ill. App. 3d 883,

890 (2004). In Illinois, the Act provides a two-stage process for the involuntary termination of parental rights. First, the State must prove by clear and convincing evidence that a parent is unfit pursuant to section 1(D) of the Adoption Act. *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If a parent is found unfit, the State must show by a preponderance of the evidence that termination of parental rights is in the child's best interests. *Id.* at 364. 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). A trial court's best interest finding will not be reversed unless it is against the manifest weight of the evidence. *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32 (2007).

¶ 11 In this case, after examining appellate counsel's motion to withdraw and the record of the trial court proceedings, we grant appellate counsel's motion and affirm the decision of the trial court. Respondent stipulated to a count of neglect regarding both minors. Respondent was informed of her rights, her obligations, and all that she needed to accomplish to have the minors returned to her care. Although we note that respondent initially engaged in some services and sporadically attended visitation with Andel F.R. and Yara F., as time went on, the record indicates that respondent ceased visitation with the minors and cooperation with DCFS. Despite notice, respondent failed to appear in court for the latter permanency hearings, the unfitness hearing, and the best interest hearing.

¶ 12 With respect to unfitness, the trial court found that respondent had abandoned the children when she failed to engage in services or visitation for 14 months prior to the unfitness hearing. Respondent did not maintain contact with her attorney or DCFS and did not attend the unfitness hearing. We determine that the trial court correctly found respondent unfit, and this finding was not against the manifest weight of the evidence. See *Veronica J.*, 371 Ill. App. 3d at 831-32 (An

appellate court will not overturn a trial court's ruling on parental unfitness unless it is against the manifest weight of the evidence).

¶ 13 With respect to the best interests of the minor, the trial court heard testimony from the DCFS caseworkers of each child. The caseworkers testified that respondent had shown little interest in her children and had not attended services or visitation for more than a year. Both caseworkers opined that the needs of the minors were met by their foster families and further opined that the children felt actual love and attachment to the foster parents, whom they referred to as "mom and dad." The foster parents testified that they loved the children, cared for all of their needs, and wished to adopt the children. Andel F.R.'s foster parents testified that they had taken many classes and done research regarding autism and felt confident in their ability to ensure that Andel F.R. was given the care and services he needed to thrive.

¶ 14 We find that it is in the minors' best interests to allow them to obtain the permanency, stability, and support that each child deserves and requires. See *Veronica J.*, 371 Ill. App. 3d at 822. Thus, we determine the trial court's finding that it was in the minors' best interest to terminate parental rights was not against the manifest weight of the evidence. *Id.* at 831-32; also see *In re K.B.*, 314 Ill. App. 3d 739, 751 (2000) (holding that an appellate court can affirm based on any ground apparent from the record).

¶ 15 In making this determination, we take this opportunity to remind appellate counsel that a motion to withdraw for the reasons appellate counsel set forth should include specific authority of counsel's grounds for withdrawal. See *Anders*, 386 U.S. at 744; Also see *Austin C.*, 353 Ill. App. 3d at 985. Moreover, we note that although counsel's motion provides that respondent has "no meritorious argument" to offer on appeal and goes on to explain an argument which could be made

but lacks merit, we note other arguments that counsel could have addressed on respondent's behalf, such as whether respondent's actions constituted abandonment, and then explained why such arguments would not have been successful. See *Austin C.*, 353 Ill. App. 3d at 985-86 (providing that if *Anders* treatment is warranted, "counsel should state *anything* in the record that arguably supports an appeal with regard to that finding, sketch out the argument in support of the issue, and then explain why the argument would be frivolous, providing applicable authority in support of his position").

¶ 16 However, 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 from this court. Thus, we grant appellate counsel's motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 17 Affirmed.