

2014 IL App (2d) 130812-U
No. 2-13-0812
Order filed January 9, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> TERRENCE H., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 2009-JA-455
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Temekia H., Respondent-Appellant).)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *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.

¶ 2 Respondent, Temekia H.,¹ appeals from the trial court's order declaring her an unfit parent and terminating her parental rights to her son, Terrence H. The trial court determined that respondent was an unfit parent in that she failed to: (1) maintain a reasonable degree of interest,

¹ The court also terminated the parental rights of Jonathon H., the minor's biological father, but he is not a party to this appeal.

concern, or responsibility as to Terrence H.'s welfare (750 ILCS 50/1(b) (West 2012)); (2) protect Terrence H. from conditions within his environment injurious to his welfare (750 ILCS 50/1(g) (West 2012)); and (3) make reasonable progress toward the return of Terrence H. to her within the nine month period after the end of the initial nine month period of the adjudication of neglect or abuse (750 ILCS 50/1(m)(iii) (West 2012)). Subsequently, the trial court determined that the termination of respondent's parental rights was in the child's best interests and respondent filed a timely notice of appeal.

¶ 3 The trial court appointed counsel to represent respondent on appeal. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel filed a motion for leave to withdraw.² In his motion, counsel states that he thoroughly reviewed the record and determined there are no meritorious arguments to be made in support of appeal. Contemporaneously with his motion, counsel filed a memorandum of law that contains a statement of facts. The memorandum also identifies one potential argument on appeal and explains why the argument lacks merit. Counsel represents that he mailed a copy of the motion and the memorandum to respondent. The clerk of this court also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has passed, and respondent has not presented anything to this court. We agree that the appeal presents no issues of arguable merit. For the reasons set forth below, we grant appellate counsel's motion to withdraw and affirm the judgment of the trial court.³

¶ 4

I. BACKGROUND

² The *Anders* procedure has been applied to proceedings to terminate parental rights. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000).

³ We recognize that this disposition is filed 3 days after the 150-day term mandated by Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010).

¶ 5 This appeal involves minor Terrence H., born March 1, 2007. Respondent is his biological mother. In March 2010, a neglect petition was filed alleging three counts of neglect as the minor. On May 27, 2010, respondent stipulated to count II of the petition, which alleged that the minor was neglected in that respondent had “struck the minor causing him to fall and then [she] violently dragged the minor by the arm, thus placing him at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b) [West 2010].” The minor was adjudicated neglected and custody and guardianship were granted to the Illinois Department of Children and Family Services (DCFS).

¶ 6 On November 22, 2010, the first permanency hearing was held. Michelle Garnhart, foster care case manager with Children’s Home & Aid testified as follows. Garnhart had been Terrence H.’s case manager since March 2010. Terrence was three years old and was in foster placement with a relative. All his needs were being met and he was developmentally on target. Respondent was consistent with her weekly supervised visits. Respondent had been engaging in the services and classes as planned; drug screens, domestic violence services, anger management services, parenting services. The trial court found that respondent made reasonable efforts to follow the service plan and achieve the goal to return home. The trial court determined that Terrence H. would be in short-term care with a continued goal to return home within a period not to exceed one year.

¶ 7 On May 23, 2011, the second permanency hearing was held. Garnhart testified as follows. Terrence H. was four years old and was in foster placement with a relative. He was doing well and all his needs were met. Respondent had been consistent with the services she had been asked to engage in over the six-month time period since the last permanency hearing; including domestic violence services, anger management services, and drug screenings, which had all been negative. Respondent also obtained an apartment and had obtained unemployment benefits. Garnhart recommended a return home within five months. The trial court found that

respondent made reasonable efforts to follow the service plan and achieve the goal to return home. The trial court determined that Terrence H. would be returned home by a specific date within five months.

¶ 8 On November 22, 2011, the third permanency hearing was held. Garnhart testified as follows. Terrence H. was now four years old and was in doing well in foster placement with a relative. All his needs were being met and he was developmentally on track. The permanency goal at the time was that Terrence H. would return home within five months. Respondent's visitation with Terrence had to be changed from unsupervised to supervised because respondent tested positive for cocaine in September 2011. Respondent had been scheduled to visit her son two hours twice a week, but missed several visits when the visits were changed to being supervised. Respondent had been asked to engage in drug screens, a substance abuse assessment, individual counseling, parenting classes, parenting coaching, visitation, general cooperation, working on her G.E.D., obtaining housing and obtaining an income. Respondent had not been compliant because she did not complete some of the drug screens, tested positive for cocaine in September, and had not had her substance abuse assessment. Respondent was compliant in that she had engaged in individual counseling and parenting classes. Garnhart recommended that the permanency goal should be "return home within 12 months." She based her recommendation on the fact that respondent tested positive the day after she had been with Terrence H. for three days and that respondent had been missing visits. Following the evidence, the trial court found that respondent had "not made reasonable efforts" to follow the service plan and achieve the goal towards the return of the minor to her home. The trial court determined that the "minor will be in short-term care with a goal to return home within a period not to exceed one year."

¶ 9 On May 21, 2012, the fourth permanency hearing was held. Garnhart testified as follows. Terrence H. was now five years old and was doing well in traditional foster care. He had been in his current foster home since December 2011. Respondent's visitation with Terrence H. had been inconsistent over the last six months and respondent had not seen her son for almost two months. Further, respondent failed to receive a substance abuse assessment as requested and failed to consistently participate in drug screening and individual counseling. Respondent had not been cooperative. Respondent did not report whether she had appropriate housing, a job or a source of income; she failed to complete her G.E.D. program; and she had anger outbursts with Garnhart in the past six months. To Garnhart's knowledge, respondent had not engaged in any services because Garnhart had not spoken to her in the last two months. Following the evidence, the trial court found that respondent had "not made reasonable efforts or progress" to follow the service plan and achieve the goal towards the return of the minor to her home. The trial court determined that the "minor will be in short-term care with a goal to return home within a period not to exceed one year."

¶ 10 On August 7, 2012, after a hearing, the trial court found that it was in Terrence H.'s best interest to move to Indiana with his foster parents. The trial court ordered DCFS to set up a monthly visitation schedule between Terrence and respondent.

¶ 11 On October 15, 2012, the fifth permanency hearing was held. Garnhart testified as follows. Terrence H. was now five years old and was doing well in traditional foster care. He had been living with in his current foster family in Indiana since December 2011. Respondent had not visited with Terrence since July 20, 2012, and had visited him only twice in the last two months. Respondent had not completed a drug screen since the end of May 2012, she had not completed a substance abuse assessment, and she had not participated in individual counseling, anger management or parenting classes, and she has not maintained adequate housing or income.

Garnhart opined that respondent had not made reasonable progress and that the goal be changed to termination of parental rights. Following the evidence, the trial court found that respondent had “not made reasonable efforts or progress” to follow the service plan and achieve the goal towards the return of the minor to her home. The trial court determined that the “minor will be in substitute care pending court determination or termination of parental rights.”

¶ 12 On January 4, 2013, the State filed an amended motion for termination of parental rights and power to consent to adoption. The State alleged in four counts that respondent had failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to Terrence H.’s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) protect Terrence H. from conditions within his environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2012)); and (3) make reasonable progress toward the return of Terrence H. to her within the nine month period after the end of the initial nine month period of the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 13 The hearing regarding unfitness commenced on April 18, 2013. Respondent failed to appear on that date. Garnhart testified as follows. She had been the minor’s case manager since March 2010. Throughout the case, Garnhart had sporadic contact with respondent. Although respondent had been requested to complete drug screens, she had not completed any since May 2012. Further, Garnhart had not visited with the minor since July 2012. Although respondent had been requested to attend a family meeting she had not done so. Respondent could not participate in parenting coaching as required because she had tested positive for cocaine in September 2011.

¶ 14 No witness testified on behalf of respondent. Respondent’s counsel stated that, had respondent arrived before the close of evidence, she would have testified. The trial court granted respondent’s motion to reopen evidence for the purpose of having her testify. The trial court

then continued the case for June 25, 2013, to allow respondent to testify and to allow rebuttal evidence.

¶ 15 At the beginning of the hearing on unfitness on July 25, 2013, respondent failed to appear. Respondent appeared in court after the close of evidence as to unfitness and prior to argument. The trial court found respondent unfit as to all three counts in the State's motion to terminate parental rights.

¶ 16 The trial court then began the best interests hearing. The trial court took judicial notice of the evidence of the unfitness hearing and the report prepared by Garnhart on July 18, 2013. Garnhart testified as follows. The minor has a medical condition that requires medical care and requires him to avoid certain foods. The minor's foster parents were aware of the condition and were sensitive to it. The minor was doing well in the foster home and he had expressed a desire to remain in the home and to be adopted by his foster parents. Respondent had not been consistent with visitation or any services for the past year. The minor had been in seven different placements since the case had opened.

¶ 17 Jason Geiger, the minor's foster father, testified that he had been including the minor in family activities and had involved the minor with the Boys' and Girls' club, summer camp, tumbling and swimming lessons.

¶ 18 On July 25, 2013, the trial court found that it was in Terrence H.'s best interests to terminate respondent's parental rights. On August 7, 2013, respondent filed her notice of appeal.

¶ 19

II. ANALYSIS

¶ 20 Section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2012)) outlines a bifurcated procedure to determine whether a parent's rights should be terminated. First, the court must determine whether the parent is unfit. See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If a court finds a parent unfit, it must then determine whether the termination of parental

rights would serve the child's best interest. See *Id.* at 352. The trial court must determine that the parent is unfit by clear and convincing evidence. *Id.* at 364. Following a determination of unfitness, the trial court must determine that termination of the parent's parental rights is in the best interests of the child by a preponderance of evidence. *Id.* at 365.

¶ 21 The only potential issue identified by appellate counsel is whether the trial court's decision to permit the minor to move out of state deprived respondent the opportunity to engage in regular and consistent visitation which significantly contributed to her inability to demonstrate that she maintained a reasonable degree of interest in, concern over, or responsibility for the minor's welfare.

¶ 22 The trial court found respondent unfit on three separate grounds, including respondent's "[f]ailure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare." See 750 ILCS 50/1(D)(b) (West 2010). Any one of the three elements; interest, concern, or responsibility; may be considered as a basis for unfitness. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). In determining whether a parent has failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare, courts consider various factors, including the parent's past efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare. *Id.* at 108. If visitation is not possible, letters, cards, gifts, and telephone calls may suffice to show a parent's concern for and interest in the child. *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994). Courts consider the parent's efforts relevant, not necessarily the success of those efforts. *Id.* at 246. A trial court's ruling on unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.W.*, 232 Ill. 2d 92, 104 (2008). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Id.*

¶ 23 In this case, the record supports the trial court’s determination that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Terrence H.’s welfare. The principal caseworker testified that in September 2011 respondent tested positive for cocaine and her visitation was changed from unsupervised to supervised. Respondent then began missing several visits with her son. Further, from December 2011 to May 2012, respondent’s visits with her son were “inconsistent” and she did not visit her son for two months during that time period. Although the record is unclear regarding when Terrence H.’s foster family moved to Indiana, the record indicates that regular visitation was available to respondent. However, respondent was either inconsistent or failed to participate. Further, there is no evidence in the record indicating that respondent sent any cards, letters or gifts to her son, that she called him on the telephone or that she inquired about his well-being. In light of the record, the trial court’s finding that the State proved respondent unfit on the ground she failed to maintain a reasonable degree of interest, concern, or responsibility as to Terrence H.’s welfare is not against the manifest weight of the evidence.

¶ 24

III. CONCLUSION

¶ 25 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law and the relevant case law, we agree with appellate counsel that there are no potential issues that would warrant relief on appeal.

¶ 26 Accordingly, we allow the motion of appellate counsel to withdraw as counsel in this appeal, and we affirm the judgment of the circuit court of Winnebago County.

¶ 27 Affirmed.