2015 IL App (2d) 140784-U
No. 2-14-0784
Order filed January 12, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re T.D., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 11-JA-317
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. T.L., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: In the termination of parental rights proceeding, there was no potentially meritorious issue for appeal. Appellate counsel's motion to withdraw, therefore, was allowed.

¶ 2 On August 5, 2014, the circuit court of Winnebago County terminated the parental rights of respondent, T.L., in his child, T.D. (Previously, T.D.'s mother, N.D., signed a voluntary consent to adoption in order to allow her mother, the minor's grandmother, to adopt T.D., but N.D. is not a party to this appeal.) The trial court appointed appellate counsel, and respondent timely appeals. Pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel now moves to withdraw as counsel on appeal. In her motion, counsel states that she has read the record and found no issue

of arguable merit. Counsel supports her motion with a memorandum of law providing a statement of facts, identification of potential issues on appeal, and an argument why each issue lacks arguable merit. See *Anders*, 386 U.S. at 744 (appellate counsel must accompany his or her request to withdraw with a brief "referring to anything in the record that might arguably support the appeal"). We granted respondent 30 days to respond to the motion to withdraw. The time has elapsed and respondent has not filed a response to the motion to withdraw. We have carefully reviewed the record and arguments of counsel and agree with counsel that there are no potentially meritorious issues for appeal. Accordingly, we grant counsel's motion to withdraw.

¶ 3 I. BACKGROUND

¶ 4 On July 19, 2009, the minor was born. In October 2011, the State filed a petition alleging the minor to be neglected. At the subsequent shelter care hearing, the trial court questioned the mother, and she identified respondent as the father of the minor. At the time of the hearing, respondent was incarcerated in the Illinois Department of Corrections (Department), and he was served with a summons.

¶ 5 In January 2012, a paternity test was performed on respondent and indicated that he was, in fact, the biological father of the minor. On January 17, 2014, the trial court adjudicated respondent as the biological father of the minor.

¶ 6 In May 2012, respondent was released from the Department. The caseworker for the minor and the mother reported that, while respondent had been incarcerated, he had communicated with the caseworker. However, once released from the Department, respondent had not been in contact with the caseworker. At the first permanency review, held on July 16, 2012, the trial court held that respondent had not made reasonable efforts regarding reunification with the minor.

¶ 7 On January 14, 2013, the second permanency review was held. The caseworker indicated that, previously, respondent had been found to be the biological father as a result of paternity testing and, initially (while incarcerated), he maintained contact with the caseworker and the agency. Upon respondent's release from the Department, however, he ceased all contact with the caseworker and the agency. According to the caseworker, it was believed that respondent was residing locally, but despite diligent searches, the caseworker was unable to provide a current or even a possible address. The caseworker reported that respondent had no contact with the agency during the period currently under review. The court held, again, that respondent had not made reasonable efforts or progress.

¶ 8 On July 15, 2013, a third permanency review was held. The caseworker indicated that respondent had not contacted the agency since the previous review. A certified letter was sent and received at a possible address for respondent, but there was no response to the letter. The court again held that respondent had not made reasonable efforts or reasonable progress.

¶ 9 On October 7, 2013, the matter returned to the trial court. At this hearing, the mother signed a Final and Irrevocable Consent to Adoption. The caseworker indicated that respondent had not participated in services or contacted the agency. The caseworker noted that, on June 27, 2013, respondent was again arrested and imprisoned in the jail, but the caseworker had been unable to contact respondent. The court held that respondent had not made reasonable efforts or progress.

¶ 10 On January 17, 2014, the State filed a petition to terminate, among others, respondent's parental rights, alleging that he had "failed to maintain a reasonable degree of interest, concern[,] or responsibility as to the [minor's] welfare," and that he had demonstrated the "intent to [forgo] his parental rights." At the January 17 hearing, respondent was present in court and an attorney

was appointed to represent him for the termination of parental rights proceedings.

¶ 11 On February 27, 2014, the trial court held a hearing on respondent's parental unfitness. At the time of the hearing, respondent had been incarcerated for the previous seven months, and he was awaiting sentencing on a robbery or attempted robbery conviction (the record is unclear on the nature of the conviction). Respondent testified that, when he was not incarcerated, he resided in the area. Respondent acknowledged that, when the minor was born, he was not in custody, and when the minor was placed into foster care with his grandmother, he also was not in custody, but respondent had been in and out of custody since 2004. Respondent took the paternity test while he was in custody. Respondent acknowledged that he did not live with the minor but maintained that he visited occasionally for birthdays and holidays. Respondent admitted that he did nothing on his own to establish his paternity of the minor and that he did not pay child support for the minor.

¶ 12 Respondent testified that, when he agreed to the paternity test, he learned the identity of the caseworker and received mail from her, but after he was released from the Department in 2012, he never tried to contact the caseworker. Respondent testified that he thought the mother would complete the services necessary to be reunited with the minor and maintained that he did not understand how serious the situation was.

¶ 13 Respondent testified that he had seen the minor a couple of times in 2013 when he was released from the Department and the mother was visiting with the minor. This testimony was rebutted by the caseworker who pointed out that the mother's visitation with the minor was always supervised and nothing in her notes and reports indicated that respondent was ever present during a supervised visitation between the mother and the minor. Respondent testified that he provided the minor with birthday gifts.

¶ 14 Respondent, under questioning from his attorney, testified that he gave the mother money from time to time when he could, but the money was not expressly for the minor's support. According to respondent, the last time he heard from the caseworker was after the paternity test. Respondent maintained that he did not understand that his parental rights could be terminated during the pendency of this case. Respondent testified that he believed that the mother had voluntarily placed the minor with the grandmother until she could get the minor back. Respondent claimed that, if he knew his parental rights could have been terminated, he would have been more active and engaged in the process of the case.

¶ 15 On April 24, 2014, the trial court held that respondent was unfit, finding that he had not maintained a reasonable degree of concern and that the evidence showed his intent to forgo his parental rights. The court made factual findings, including that respondent did not come to court to establish his parental rights, he knew the minor was in a foster placement, and he knew the caseworker's name and phone number but did not contact her about the status of the case, accepting instead whatever the mother told him about the case. The court also determined that he had never paid child support for the minor. Regarding his intent to forgo his parental rights, the trial court determined that he did not bring a proceeding to confirm his paternity of the minor, never established his parental rights to the minor, and never paid any child support. The court also determined that respondent had been in and out of jail and prison during the time the minor was in foster care. Respondent had no visitation, or only very minimal visitation, with the minor. The trial court concluded that respondent had not shown a reasonable degree of interest, concern, or responsibility.

¶ 16 On August 5, 2014, the State proceeded to the best-interests hearing. The trial court took judicial notice, without objection, of the report prepared for the best-interests hearing and the

testimony from respondent's unfitness hearing. Respondent testified that he barely saw the minor, but, notwithstanding this, he believed that he had a good relationship with the minor, and that the minor knew him as his father. Respondent acknowledged that he did not live with the minor, but noted he had an appropriate place for the minor to live once he was released from custody. Respondent testified that he did not have a job waiting for him upon release, but was in the process of lining one up as well as planning to enroll in school. Respondent testified that he had family living in the area, but they had not had any contact with the minor. Respondent testified that he had other children with whom he would occasionally visit. On cross-examination, respondent agreed that the minor's foster parent (the grandmother) had provided day-to-day care for the minor and had done this task well. Respondent admitted that he did not speak with the foster parent, he had never spoken with the caseworker, and that he did not know what services he needed to complete in order to become fit for custody of the minor. Respondent explained that the reason he thought his parental rights should not be terminated was because he should receive the same opportunity as the mother to be reunited with the minor.

¶ 17 The caseworker testified that, beginning in November 2013, she had been working with the minor and visited the minor at least once a month. The caseworker testified that, since February 2013, the minor and his siblings were all placed with the maternal grandmother and were all very close with each other. The grandmother had agreed to provide permanency for the minor and his siblings. The minor and his siblings were all doing well with the grandmother; the minor had enrolled in pre-kindergarten classes, and neither the minor nor his siblings exhibited any developmental problems.

¶ 18 The trial court held that it was in the best interests of the minor to terminate respondent's parental rights. On August 14, 2014, the order terminating respondent's parental rights was

filed. Respondent timely appeals.

¶ 19 II. ANALYSIS

¶ 20 Section 2-29 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-29 (West 2012)) provides a two-step procedure for the termination of parental rights. First, the trial court must find, by clear and convincing evidence, that the party is unfit. *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Second, once the finding of unfitness is made, the court determines whether the best interests of the child are served by terminating the party's parental rights. *Id.* at 337-38. Neither a finding of unfitness nor a best-interests determination will be disturbed on appeal unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613, 617 (2009). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 21 We agree with counsel that there is no colorable argument that respondent is not unfit. The trial court determined that respondent was unfit because, among other things, he failed to maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare. Section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2012)) provides, pertinently, that an unfit person is one who fails "to maintain a reasonable degree of interest, concern or responsibility for the child's welfare." Because of the disjunctive phrasing in subsection (b), any of the three denominated elements may serve as a basis for a finding of unfitness: the lack of a reasonable degree of interest for the child's welfare, the lack of a reasonable degree of concern for the child's welfare, or the lack of a reasonable degree of responsibility for the child's welfare. *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51. The trial court considers the parent's efforts, which must be objectively reasonable under the circumstances. *Id.*

¶ 22 The evidence presented at the unfitness hearing established that respondent cooperated with the State in the paternity determination. Upon his release from the Department, however, from May 2012 to June 2013, respondent did not contact the caseworker, did not visit the minor, and did not otherwise attempt to determine what was happening with the minor even though he knew the identity and contact information for the caseworker, knew that the minor was in a foster placement (and knew identity and location of the foster parent), and was residing locally. Respondent did explain that he talked with the minor's mother and assumed that she would comply with the terms and programs offered sufficiently to achieve reunion with the minor, and he accepted the mother's statements about her progress and minor's situation; respondent further explained he never understood the seriousness of the minor's situation or that he might lose his parental rights. Respondent admitted that he never provided child support for the minor, never tried to register his paternity either after the minor's birth or after the results of the paternity testing, and he never undertook any action to establish his parental rights. By respondent's testimony, he seldom visited with the minor and only on the minor's birthdays or other holidays. Respondent's testimony on this point was called into question by the caseworker, who noted that all visitation with the minor was supervised, and she testified that she neither recalled nor had recorded that respondent ever participated in a supervised visitation with the minor.

¶ 23 Based on the evidence presented at the unfitness hearing, we conclude that the State clearly and convincingly demonstrated that respondent failed to show a reasonable degree of interest, concern, or responsibility in the minor's welfare, and that the trial court's determination of unfitness was therefore not against the manifest weight of the evidence. Respondent admitted that he never cared for the minor or paid any child support for the minor. Respondent admitted that he visited the minor only infrequently, if at all, and that he did not contact the caseworker to

determine minor's situation or the services he would need to undertake to prove his fitness to exercise his parental rights. Further, respondent admitted that he did not attempt to establish or assert his parental rights to the minor at any time. Thus, the finding of unfitness, on any of the three grounds available is clearly established, so that, based on this record, there is simply no ground available for a colorable challenge to the trial court's finding of unfitness.

¶ 24 The trial court also determined that respondent intended to forgo his parental rights. Even though the trial court determined a second ground for a finding of unfitness, "[a] parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence." *In re D.C.* 209 Ill. 2d 287, 296 (2004). Because at least one ground of unfitness is not susceptible to a colorable challenge on appeal, we need not consider whether there are any other arguably meritorious bases for challenging the remaining grounds of unfitness.

¶ 25 We now move to the question of the minor's best interests, which requires a change in our perspective: in the fitness stage, "the parent's past conduct is under scrutiny." *In re D.M.*, 336 Ill. App. 3d 766, 771-772 (2002). In contrast, at the best-interests stage, the court focuses "upon the [child's] welfare and whether termination [of the parent's parental rights] would improve the child's future financial, social and emotional atmosphere." *Id.* at 722. In determining the child's best interests and whether to terminate the parent's rights, the court must consider: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationship with parent figures, siblings, and other

relatives; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available for the child. 705 ILCS 405/1-3(4.05) (West 2012); *In re S.H.*, 2014 IL App (3d) 140500, ¶ 34. No single factor is dispositive, and the trial court's determination of a child's best interests will not be disturbed on appeal unless it is against the manifest weight of the evidence. *S.H.*, 2014 IL App (3d) 140500, ¶ 34.

¶ 26 The evidence in the record shows that the minor has a strong attachment to the grandmother, the foster parent, as well as to his siblings, who also live with the grandmother. Beginning in October 2011, the minor has resided in the foster home with one sibling. In February 2013, another sibling was placed in the foster home and all three siblings live there together. The grandmother expressed her commitment to providing permanence and stability for the minor and has been committed to adopting the minor and the two siblings and having the children remain together. The evidence showed that the grandmother has provided the minor's day-to-day care, such as attending the minor's doctor appointments, participating in the minor's schooling and education, and has provided the minor with a safe, loving, and stable home. The minor has resided in the foster home for most of his life, is extremely attached to his foster family, and has formed his independent identity in the care of his grandmother. In contrast to the stability and permanence of the foster family, respondent has spent, at best, a few birthdays and holidays with the minor and, even when released from imprisonment from May 2012 to June 2013, did not visit with the minor. While respondent testified that he wanted a chance to become reunited with the minor, his actions belied that testimony because, during all of the pendency of this case, respondent did not inquire about the services he needed to become fit. Moreover, while the record is unclear about the amount of time (certainly longer than a year) it would take him to become a safe and attentive parent, this process would commence only upon his

scheduled 2015 release from imprisonment. Indeed, given respondent's track record of failing to visit, support, or otherwise manifest concern, interest, or responsibility, it is unlikely that he would suddenly and successfully do so now.

¶ 27 Based on this evidence, the trial court determined that it was in the minor's best interests to terminate respondent's parental rights and, upon considering the evidence in light of the factors enumerated above, we conclude that this holding was not against the manifest weight of the evidence. Accordingly, we find no potentially meritorious basis on which to challenge the trial court's determination that the termination of respondent's parental rights was in the best interests of the minor.

¶ 28 III. CONCLUSION

¶ 29 Having examined the record and the motion to withdraw, we agree with counsel that this appeal presents no issue of arguable merit. We therefore grant counsel's motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 30 Affirmed.