2015 IL App (2d) 141136-U
No. 2-14-1136
Order filed March 26, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re RAMONE B., JR., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JA-54
	)	
(The People of the State of Illinois, Petitioner-Appellee v. Delilah T., Respondent-Appellant, and Ramone B., Respondent).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), was granted, and the trial court's order terminating respondent's parental rights was affirmed, where an examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Delilah T., to be an unfit parent and determined that it was in the best interests of her minor son, Ramone B., Jr. (Ramone), to terminate her parental rights. Respondent appealed, and the trial court appointed counsel on her behalf. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), representing to this court that there is no issue of arguable merit to support an appeal. Counsel further states that she advised respondent of her opinion. We informed respondent that she had 30 days to respond to

the motion. That time is past, and she has not responded. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On February 16, 2012, the State filed a petition alleging that Ramone was a neglected minor. Count I alleged that his environment was injurious to his welfare due to domestic violence between the respondent-mother and the respondent-father, Ramone B.[1] Count II alleged that the child's environment was injurious to his welfare, because his siblings[2] were removed from respondent's care, and respondent failed to cure the conditions that caused the removal. Respondent and Ramone Sr. waived their right to a shelter care hearing, and the court found probable cause to believe that Ramone was neglected. The court transferred temporary guardianship and custody to the Department of Children and Family Services (the Department), with discretion to place the child with a responsible relative or in traditional foster care.

¶ 5 The court conducted an adjudicatory hearing on September 19 and October 4, 2012. We detailed the evidence presented at that hearing in *In re Ramone B., Jr.*, 2013 IL App (2d) 130016-U (affirming the trial court's orders adjudicating Ramone neglected and making him a ward of the court). In short, the evidence showed that respondent had been indicated by the Department with respect to four of her other children for medical neglect, maintaining an injurious environment, and inadequate supervision. Additionally, in 2011, the Department had taken protective custody of respondent's newborn fifth child based on the previous neglect of the

[1] From this point forward, we will refer to the respondent-mother as "respondent" and the respondent-father as "Ramone Sr." Ramone Sr. was murdered on July 31, 2014, during the pendency of the termination proceedings.

[2] Ramone Sr. was not the father of these other children.

other children. None of Ramone's siblings had been returned to respondent. The trial court in the present case found that the State met its burden on both counts of the petition and adjudicated Ramone a neglected minor.

¶ 6 The court held a dispositional hearing on December 12, 2012. Lorinda Green, Ramone's case manager, testified that Ramone had been living in Iowa with his paternal aunt since November. Respondent's service plan included domestic violence counseling, drug drops, and parenting classes. Green testified that the drug drops were all negative, and that respondent had engaged in domestic violence services since October. Respondent had also attended parenting classes through Rockford Area Pregnancy Center shortly after Ramone was born, but the classes did not meet the Department's requirements. Respondent visited Ramone during February and March of 2012, but she did not visit him again until October. Moreover, Green recounted reports of domestic violence between respondent and Ramone Sr. both before and shortly after Ramone's birth. Green testified that she had heard from respondent's family members that respondent and Ramone Sr. were still in a relationship.

¶ 7 At the conclusion of evidence, the court found that the State had proved that respondent was unfit and unable to care for Ramone. The court entered an order making Ramone a ward of the court and granted guardianship to the Department.

¶ 8 First Permanency Review

¶ 9 At the first permanency review on February 11, 2013, Green testified that Ramone was still living with his paternal aunt in Dubuque, Iowa. Visitation between respondent and Ramone was at that time scheduled for every other week, and the goal was to return home within 12 months. Respondent completed a domestic violence group and was on the wait list for individual counseling. According to Green, for the last month and a half, respondent "had been very

cooperative." However, prior to that, she did not want to attend counseling. The court found that respondent had not made reasonable efforts, citing the absence of visitation before the child moved to Iowa. The court declined to make findings as to progress, and determined that it was in Ramone's best interests to maintain the goal of returning home within 12 months.

¶ 10 Second Permanency Review

¶ 11 The second permanency review proceeded on August 12, 2013. Green testified that Ramone was still residing in Iowa with his aunt and her fiancé. Respondent maintained contact with Green almost every week. However, Green testified that respondent received an unsatisfactory rating for her services this review period, and Ramone was no closer to being sent home with respondent. According to Green, respondent told a case aide that she was "not going to keep putting her life on hold every Saturday to go to Iowa," because she had "things to do." To that end, Green reported that respondent had been inconsistent with her visits. Specifically, she missed one visit in May and three in June 2013. Additionally, although respondent had completed a domestic violence group, she was still in a relationship with Ramone Sr.

¶ 12 Green testified that she observed several of respondent's visits with Ramone in April and May 2013. During those visits, Green observed some of the behaviors that the case aide had reported. Green was presumably referring to the Department's written report submitted to the court, which indicated that respondent "often does not provide Ramone with appropriate supervision which has resulted in Ramone falling off chairs, almost falling down stairs, and wandering off." The report also stated that the case aide often had to "intervene to ensure Ramone's safety," documenting one occasion in May 2013 when the aide chased Ramone while respondent laughed.

¶ 13 Respondent did not testify at the hearing. However, her counsel proffered that, had she testified, she would have disputed Green's testimony about respondent's behavior during visits.

¶ 14 At the conclusion of the hearing, the court found that respondent had not made reasonable efforts or progress. The court concluded that it was in Ramone's best interests to maintain the permanency goal of returning home within 12 months.

¶ 15 Third Permanency Review

¶ 16 The court held the third permanency review on January 14, 2014. Green testified that respondent had been working with a parenting coach since October and was reportedly doing well in that service. However, Green said that respondent had "struggled to be consistent with visitations during this review period" and was a "no call no show" for several visits. Respondent was being transported to Iowa for visits by a case aide, but complained about not having the time to spend her whole Saturday traveling to and from Iowa. Specifically, Green testified that respondent "feels that Ramone should have to be brought to Rockford."

¶ 17 Additionally, Green related that respondent was removed from a library during one visit in October 2013 for screaming obscenities on her cell phone while in the presence of Ramone and other children. According to Green, respondent did not understand why the library staff made her leave. Green also had concerns about respondent's reports of being in a relationship with Ramone Sr., because the couple had a history of domestic violence. If the goal remained for Ramone to return home, respondent would have to be re-referred for domestic violence services.

¶ 18 Respondent testified that she "made every visit that [she] possibly could," explaining that she experienced difficulties with buses. She also noted that the case aide had canceled some visits. Respondent expressed her willingness to travel to Iowa, and claimed that she never said

that she was too busy to go there. According to respondent, she had been removed from the library because she got upset at some text messages that she received and she "must've been talking too loud." She explained that she attended a "lunch and learn" group in November, and she used what she learned there during her visits with Ramone. Respondent admitted that she was currently in a relationship with Ramone Sr., but denied that they had a history of domestic violence or even arguing. She also denied ever having reported physical fights with Ramone Sr.

¶ 19 The court found that respondent had not made reasonable efforts or progress. The court changed the goal to substitute care pending court determination on termination of parental rights.

¶ 20 Petition to Terminate Parental Rights

¶ 21 On March 28, 2014, the State filed a petition to terminate respondent's and Ramone Sr.'s parental rights. As it pertained to respondent, the petition alleged that she was an unfit parent in that she failed to: maintain a reasonable degree of interest, concern, or responsibility as to Ramone's welfare (count I); make reasonable efforts to correct the conditions that were the basis for Ramone's removal within nine months after the adjudication of neglect (count II); make reasonable progress toward Ramone's return within nine months after the adjudication of neglect (count III); and make reasonable progress toward Ramone's return between July 5, 2013, and April 5, 2014 (count IV).

¶ 22 (A) Unfitness Hearing

¶ 23 The unfitness hearing proceeded on several dates between May 22 and August 18, 2014. The evidence most relevant to counsel's motion to withdraw can be summarized as follows.

¶ 24 Green's Testimony

¶ 25 Green testified that respondent was required to engage in services for parenting, counseling, and domestic violence. Respondent participated in services at various times,

including attending more than one parenting class, a domestic violence group in 2012 or 2013, individual counseling from mid 2013 to early 2014, and lunch and learn groups in late 2013. However, according to Green, there was no progress toward placing Ramone with respondent, because respondent failed to implement the things that she learned into her visits, continued to make poor relationship choices, and had unstable housing.

¶ 26 Green testified that respondent frequently missed visits with Ramone and never progressed to unsupervised visitation. There were periods when respondent would go a few months without contacting Green about the visitation schedule. Specifically, respondent did not visit Ramone between April 2012 and October 11, 2012. When respondent started visiting him again in October 2012, she was "immediately inconsistent with that," and would "often cancel or complain about not having enough time to go all the way to Iowa." According to Green, respondent missed all the visits in June 2013, and missed at least one visit per month from July to September 2013. Green also testified that respondent cancelled visits or was a "no call, no show" on October 5, October 26, November 16, and November 30, 2013. Respondent had last visited with Ramone in January or February 2014.

¶ 27 Green believed that respondent may have attended one of the three or four administrative case reviews during the pendency of this case. However, respondent did not attend the reviews in June or December 2013. Additionally, although respondent's drug drops were all negative, Green referred respondent for a substance abuse assessment in December 2013, because several of the drops were either diluted, had insufficient samples, or were not completed. Respondent did not complete that substance abuse assessment.

¶ 28 Green testified that respondent had in the past sought orders of protection against Ramone Sr. alleging physical violence. Additionally, respondent told Green in March 2012 that

Ramone Sr. had punched her in the back. However, according to Green, respondent later denied her previous allegations of domestic violence. Green believed that respondent was still in a relationship with Ramone Sr.

¶ 29 State's Exhibits

¶ 30 The court took judicial notice of the neglect petition, the orders of adjudication and disposition, and the orders following the permanency reviews. Additionally, the court admitted into evidence: service plans; the indicated packets pertaining to respondent's children; a criminal complaint dated March 26, 2010, charging respondent with domestic battery for throwing a cell phone at Ramone Sr.; respondent's guilty plea to that charge; and a conditional discharge order. Finally, the court admitted copies of the petitions for orders of protection that respondent had filed against Ramone Sr. on April 5, 2010, March 28, 2011, and March 28, 2012, as well as a court order allowing the 2012 *ex parte* order of protection to expire by agreement of the parties. In those petitions, respondent detailed various instances of Ramone Sr.'s abuse and violence.

¶ 31 Respondent did not introduce any evidence at the unfitness hearing.

¶ 32 Court's Findings on Unfitness

¶ 33 On August 18, 2014, the court found that the State proved each of the four counts against respondent by clear and convincing evidence. The court emphasized respondent's lack of progression to unsupervised visitation, her sporadic visitation, and the "history of domestic violence even after the minor was born." The court noted that respondent was not consistent with her visits during any nine month period following adjudication. Additionally, the court found significant that respondent "refus[ed] to travel to Iowa to see the minor, even though transportation was provided."

¶ 34 (B) Best Interests Hearing

¶ 35 The best interests hearing proceeded on November 7, 2014. The court took judicial notice of the evidence presented at the unfitness hearing. The court also took judicial notice of a report from the case manager and her supervisor addressing the statutory best interests factors. Green testified for the State and said that Ramone was now almost three years old. Ramone was very attached to his paternal aunt, Racquel, and her husband, William, and he referred to them as "mommy" and "daddy." Because Racquel and William lived in Iowa, there was an interstate compact in place, and a case worker went to their home every month. Green said that there had been no concerns raised about the foster parents in the monthly reports. Additionally, Racquel and William were willing to adopt Ramone and were committed to allowing him to have contact with his siblings and his former foster parents.

¶ 36 Green related that although respondent brought food and shoes for Ramone on occasion, respondent did not provide for the child's needs on a regular basis. Green last observed a visit between respondent and Ramone in the spring or summer of 2013. According to Green, respondent showed Ramone affection, but he did not show respondent affection. In Green's opinion, it was in Ramone's best interests to terminate respondent's parental rights.

¶ 37 Respondent testified on her own behalf. She testified that she gave Ramone food at every visit and brought him clothes, diapers, and shoes. She also played with him, read books to him, and did "what mothers should do for their child." She believed that she visited him once a month in 2013, but she was not sure. Asked whether she visited him in 2012, she indicated that she thought so, but that she was not sure. She admitted that she had not seen her son in a long time, but she missed him and wanted to see him. Asked why she thought it was best for Ramone to return to her care, she replied: "Because he's my child, and I'm his mother, and he's the only thing I have right now. And I want to love him, shelter him, clothe him. I want to watch my son

to [*sic*] grow, and right now I'm not seeing none of it." She testified that she had taken steps to see Ramone, but that she did not receive an answer from Racquel.

¶ 38 At the conclusion of evidence, the court found that it was in Ramone's best interests to terminate respondent's parental rights. Respondent timely appealed.

¶ 39 II. ANALYSIS

¶ 40 Involuntary termination of parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2012)) is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *C.W.*, 199 Ill. 2d at 210. If the parent is unfit, the matter proceeds to a second hearing, at which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, 366 (2004). The trial court is in the best position to make factual findings and credibility assessments, and we will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 41 We agree with counsel that there is no issue of arguable merit to support an appeal from the trial court's finding of unfitness. The court determined that respondent was unfit for, among other reasons, failing to make reasonable progress toward Ramone's return between July 5, 2013, and April 5, 2014. See 750 ILCS 50/1(D)(m)(ii) (West 2012). In *Jacorey S.*, the court explained the concept of reasonable progress as follows:

"[R]easonable progress is judged by an objective standard based upon the amount of

> progress measured from the conditions existing at the time custody was taken from the parent. Reasonable progress requires, at minimum, measurable or demonstrable movement toward the goal of reunification. The standard for measuring a parent's progress is to consider the parent's compliance with the service plans and the court's directives in light of the conditions that led to the child's removal, and subsequent conditions that would prevent the court from returning custody of the child to the parent. Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." (Internal citations and quotation marks omitted.) *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21.

¶ 42 The evidence at the unfitness hearing showed that respondent routinely missed visits with Ramone despite being offered transportation to Iowa. Specifically, she missed at least one visit per month from July to September 2013. She then cancelled or was a "no call, no show" for four visits between October and November 2013. During one of the visits that she did attend in October 2013, she was removed from a library for screaming obscenities in front of Ramone and other children. Respondent never progressed to unsupervised vitiation. Moreover, the evidence showed that respondent did not attend her administrative case review in December 2013. Nor did she complete a substance abuse assessment, which was requested of her because her previous drug drops were either diluted, not completed, or contained insufficient samples.

¶ 43 Additionally, the evidence showed that respondent never meaningfully addressed the issue of domestic violence, which was one of the grounds for the adjudication of neglect. The documentary evidence submitted by the State established that respondent and Ramone Sr. had a history of domestic violence and abuse. Nevertheless, at the third permanency review on January 14, 2014, respondent admitted to being in a relationship with Ramone Sr. and denied her

previous allegations of abuse. In light of this evidence, the trial court could have reasonably found that respondent did not make "measurable or demonstrable movement toward the goal of reunification" between July 5, 2013, and April 5, 2014. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21.

¶ 44 In sum, the trial court's finding of unfitness based on count IV of the petition was not against the manifest weight of the evidence, and we agree with counsel that there is no arguable issue of merit to support an appeal from the unfitness finding. Accordingly, we need not consider whether the State met its burden with respect to the other counts. See *Daphnie E.*, 368 Ill. App. 3d at 1064 ("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.").

¶ 45 Furthermore, we agree with counsel that there is no issue of arguable merit to support an appeal from the trial court's determination that it was in Ramone's best interests to terminate respondent's parental rights. The focus shifts to the child after a finding of parental unfitness, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. At the best interests hearing, the trial court considers:

> "(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 *** (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).

We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 46 The evidence showed that Ramone had been in the custody of his paternal aunt, Racquel, since November 2012, and that she and her husband, William, were willing to adopt him. According to Green, Ramone was very attached to his aunt and uncle, referring to them as "mommy" and "daddy." Additionally, Racquel and William allowed Ramone to maintain contact with his former foster parents as well as his siblings in Chicago. On the other hand, the evidence showed that, while respondent had brought food and clothing to Ramone during some visits, she was never a consistent caretaker for the child. Nor did respondent dispute that she was sporadic in visiting with Ramone. In light of this evidence, the trial court's determination that it was in Ramone's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence. Therefore, we agree with counsel that there is no issue of arguable merit to support an appeal.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we hold that this appeal presents no issue of arguable merit. Accordingly, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 49 Affirmed.