2015 IL App (2d) 141217-U
No. 2-14-1217
Order filed July 17, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TAMAJIANA T. & DEANDRE T., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 2012-JA-110 2012-JA-111
(The People of the State of Illinois, Petitioner-Appellee, v. Chitara B., Respondent-Appellant.)	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California,* 386 U.S. 738 (1967), was allowed, 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, Chitara B., to be an unfit parent and determined that it was in the best interest of her minor children, Tamajiana T., born in July 2008, and Deandre T., born in August 2007, to terminate her parental rights. Respondent appealed, and the trial court appointed counsel on her behalf. Counsel moved to withdraw pursuant to *Anders v. California,* 386 U.S. 738 (1967), representing to this court that there were no issues of arguable merit to

support an appeal. Counsel further stated that he advised respondent of his opinion. We informed respondent that she had 30 days to respond to the motion; she did not respond. We then directed counsel to file a supplemental brief or memorandum that thoroughly addressed issues concerning unfitness and best interests in this case. Counsel once again moved to withdraw pursuant to *Anders*, and stated that he advised respondent of his opinion that there were no issues of arguable merit to support an appeal. We again informed respondent that she had 30 days to respond to the motion. That time is past, and she has again failed to respond. For the following reasons, we allow counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that, prior to the instant case, respondent herself had been adjudicated neglected and removed from her mother's care, and that respondent's mother had failed to correct the conditions to have her children returned. In the instant matter, respondent left her children (the minors) in her mother's care after respondent was arrested on April 16, 2012. The State alleged that respondent's mother subsequently attended respondent's court appearance smelling of alcohol, thereby placing the minors at risk of harm. These circumstances formed the basis for the State's neglect petitions filed against respondent and the minors' father on April 18, 2012. The State filed amended neglect petitions on April 25, 2012, adding allegations that respondent and her paramour had engaged in domestic violence in the presence of her children. Respondent waived her right to a temporary shelter care hearing, and the trial court transferred temporary guardianship and custody of the minors to the Department Children and Family Services (DCFS). Respondent agreed to cooperate with DCFS by taking all necessary assessments, following up with all necessary treatment, and remaining free of all drugs and

alcohol. The children's father did not take part in the underlying proceedings and is not a part of this appeal.

¶ 5 Respondent did not appear at the adjudication hearing, which was held on August 24, 2012. The trial court heard testimony regarding the allegations set forth in the State's amended petitions and continued the matter to review the State's exhibits. On September 6, 2012, the trial court found that the State had met its burden by proving the counts in its amended petition by a preponderance of the evidence.

¶ 6 On January 10, 2013, respondent entered into an agreement with the State regarding disposition. Pursuant to the agreement, guardianship and custody of the minors remained with DCFS, and DCFS was granted discretion to place the minors with a responsible relative or in traditional foster care. DCFS was also granted discretion regarding visitations between the minors and respondent.

¶ 7 The first permanency hearing was held on July 9, 2013. Caseworker Amy Kukuczka testified that respondent "had a little bump along the way," but that the goal of returning home was still achievable. Kukuczka explained that respondent had tested positive for marijuana in April and had failed to complete a drug test in June. Kukuczka added that, although respondent had been enrolled in the Helping Abusive Parents (HAP) and Partner Abuse Intervention Program (PAIP) programs, she was discharged for lack of attendance. The trial court made no findings as to whether respondent had made reasonable efforts, and the goal of returning home remained intact.

¶ 8 The second permanency hearing was held on October 8, 2013, during which the parties stood on the caseworkers' reports. The trial court found that respondent had not made

reasonable efforts or reasonable progress during the review period. The goal remained to return home within 12 months.

¶ 9 Respondent did not appear at the third permanency hearing, which was held on April 8, 2014. Caseworker Meghan Jamison testified that respondent had failed to complete a substance abuse assessment and had been discharged from the HAP and PAIP programs due to lack of attendance for a second time. The trial court maintained the permanency goal of returning home, but found that respondent had not made reasonable efforts or reasonable progress.

¶ 10 The fourth and final permanency hearing was held on July 1, 2014. The parties agreed to stand on the caseworkers' reports. The trial court found respondent had not made reasonable efforts, nor reasonable progress, and changed the goal to substitute care pending a determination on the termination of parental rights.

¶ 11 On July 24, 2014, the State filed motions for the termination of parental rights and power to consent to adoption regarding both of the minors. The State alleged in its respective motions that respondent failed to: maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare (Count I); make reasonable efforts to correct the conditions that were the basis for the removal of the minors within nine months after the minors had been adjudicated neglected (Count II); make reasonable progress toward the return of the minors within nine months after the minors had been adjudicated neglected (Count III); and make reasonable progress toward the return of the minors within any nine-month period after the initial nine-month period after the minors had been adjudicated neglected (Count IV).

¶ 12 Respondent failed to appear at the arraignment on the motions; she also failed to appear at the hearing on the motions, which was held on November 6, 2014. Respondent's court-appointed attorney moved for a continuance on her behalf, stating that respondent had appeared

for the pretrial conference and he had notified her of the hearing date. The State objected to the continuance, asserting that respondent was not currently in custody and that there was no excuse for her failure to appear. The trial court denied the continuance motion and the parties proceeded to a fitness hearing.

¶ 13 Jamison testified that respondent had initially attended the majority of her supervised visits with the minors. However, respondent stopped attending when Jamison began supervising the visitation during the preceding summer. Jamison also testified that respondent did not attend any of the minors' doctor appointments or parent-teacher conferences. The State then admitted three service plans that had been created in relation to the case. The service plans indicated that respondent had missed drug tests, twice tested positive for marijuana, failed to complete her required assessments, and failed to complete her required counseling.

¶ 14 The trial court found that the State had proved the counts in its respective motions by clear and convincing evidence. In so finding, the trial court stressed respondent's failed and missed drug tests, her unsuccessful discharges from counseling, and her lack of overall involvement in the case. The parties proceeded directly to a best interest hearing, and the trial court took judicial notice of the evidence and testimony presented during the unfitness hearing.

¶ 15 Jamison testified that the minors had been residing in Carpentersville with their maternal great-grandmother, Josephine B., and her husband, Melvin, since the neglect petitions were filed in April 2012. The minors had been doing well with Josephine and Melvin, who had created a playroom for the minors in their basement. Josephine and Melvin had been helping the minors with their schoolwork, teaching them how to do chores around the house, and ensuring that they never missed any doctor appointments or school events. Two of the minors' teen-aged uncles were also residing with Josephine and Melvin; the minors were interacting well with their uncles,

who had proven to be positive role models. Josephine and Melvin, who were both in their sixties and in good health, were willing to adopt the minors and had signed permanency commitment forms. In the event that they became unable to adequately care for the minors, Josephine and Melvin had established an appropriate alternate caregiver plan with someone familiar with the minors.

¶ 16 Jamison also described one instance where, during a family meeting, respondent became aggravated in the minors' presence. Respondent accused Jamison of plotting against her and attempted to come across a table and strike Jamison in the face. Melvin immediately took the minors to another room and Josephine ordered respondent to leave the home.

¶ 17 The trial court found that the State had proved by the preponderance of the evidence that termination of respondent's parental rights was in the minors' best interests. The parties proceeded directly to a permanency review, and the trial court changed the permanency goal to adoption. Respondent filed a timely notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 Counsel identifies three possible issues that could be raised on appeal, whether: (1) the trial court's decision finding respondent unfit was against the manifest weight of the evidence; (2) the trial court's decision to terminate respondent's parental rights was against the minors' best interests; and (3) the trial court abused its discretion in denying trial counsel's motion to continue the termination proceeding. Counsel argues that none of these issues have any arguable merit. For the reasons that follow, we agree.

¶ 20 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.,* 199 Ill. 2d 198, 210 (2002); *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 28. First, the State must 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). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must prove by a preponderance of the evidence that it is in the best interest of the minor to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 352, (2004). A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008); *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "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).

¶ 21 Here, the trial court found that the State had proved each of the counts in its respective motions for termination of respondent's parental rights by clear and convincing evidence. Count I of the State's motions alleged that respondent "failed to maintain a reasonable degree of interest, concern or responsibility as to the [minors'] welfare." This allegation relates to subsection 1(D)(b) of the Adoption Act, which provides such grounds for a finding of unfitness. 750 ILCS 50/1(D)(b) (West 2012). As noted, respondent was twice unsuccessfully discharged from counseling for lack of attendance and she failed to appear for several of the hearings below. The trial court focused on respondent's lack of involvement in the case, commenting that respondent "basically quit visiting for no supposed reason, and had very little contact with the caseworker." The trial court further discussed respondent's failure to become involved with any of the minors' doctor appointments or parent-teacher conferences. Under these circumstances, we decline to hold that the trial court's finding regarding Count I of the State's respective motions was against the manifest weight of the evidence. Because we determine that this basis

for the trial court's finding of unfitness was proper, we need not address the remaining counts in the State's motion for termination of respondent's parental rights. See *In re J.B.*, 2014 IL App (1st) 140773, ¶ 56. Accordingly, we now turn to the trial court's finding regarding the best interests of the minors.

¶ 22 At a best-interest hearing, "the 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 at 364. Factors to be considered during a best-interest hearing include, but are not limited to, the physical safety and welfare of the child, the child's need for permanence and stability, and the uniqueness of every family and child. 705 ILCS 405/1-3(4.05) (West 2012). Additionally, it is important that the trial court consider the nature and length of the child's relationship with the present caretaker and the effects that a change of placement would have upon the child. *In re Austin W.*, 214 Ill. 2d 31, 50 (2005).

¶ 23 With these factors in mind, we also 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 the minors' best interests to terminate respondent's parental rights. As discussed above, caseworker Jamison testified that the minors were essentially thriving since being placed with their maternal great-grandparents, Josephine and Melvin. Although Josephine and Melvin were both in their sixties, they had established an appropriate alternate caregiver plan. Furthermore, at the time of the hearing, the minors had been residing with Josephine and Melvin for more than two-and-a-half years (April 2012 through November 2014). Jamison also testified regarding an incident where respondent attempted to strike her in the minors' presence. The record reflects at least two instances where respondent threatened other caseworkers with similar violence. Given the level of care that Josephine and Melvin were providing the minors, the nature and length of the

minors' relationship with Josephine and Melvin, and respondent's alleged threats toward others, we conclude that respondent's parental interests must yield to the minors' interests in a stable, loving home. See *In re D.T.*, 212 Ill. 2d at 364.

¶ 24 Finally, we agree with counsel that there is no issue of arguable merit regarding the denial of trial counsel's motion to continue the termination proceeding. "It is within the juvenile court's discretion whether to grant or deny a continuance motion and the court's decision will not be disturbed absent manifest abuse or palpable injustice." *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002). "Although a parent has a right to be present at a hearing to terminate parental rights, it is not mandatory that he or she be present, and the circuit court is not obligated to wait until he or she chooses to appear." *Id.* at 105.

¶ 25 As counsel points out, "[a] decisive factor in determining whether a trial court's ruling on a motion for continuance is correct is whether the party applying for the continuance has shown diligence in proceeding with the cause." *McMillen v. Carlinville Area Hospital*, 114 Ill. App. 3d 732, 739 (1983). As discussed, respondent did not show an adequate level of diligence in this case and she failed to appear for the hearing on the State's motions to terminate her parental rights despite being notified of the hearing date by trial counsel. Therefore, we find no abuse of discretion in the trial court's denial of the motion to continue the termination proceedings. See *In re Anaya J.G.*, 403 Ill. App. 3d 875, 882 (2010) (holding that there was no abuse of discretion in the denial of a motion to continue a best-interest hearing where the parent was inconsistent in her court appearances).

¶ 26 As a final matter, we note that this appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to that rule, the appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of

appeal. Ill. S.Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Here, respondent filed her notice of appeal on December 8, 2014. Thereafter, respondent's counsel requested an extension to file his opening brief, which this court granted. Respondent's counsel then filed an *Anders* motion to withdraw as counsel. We directed counsel to file a supplemental brief or memorandum to thoroughly address the issues concerning unfitness and best interests. Respondent's counsel filed the supplemental brief on May 8, 2015, and respondent was given until June 12, 2015, to respond to the motion, one month after the 150-day period had expired. The parties were entitled to a fair and full opportunity to develop and present their positions. Under the circumstances of the present case, including its procedural history, we believe good cause existed for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a) (eff. Feb. 26, 2010).

¶ 27 III. CONCLUSION

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

¶ 29 Affirmed.