2015 IL App (2d) 150066-U
No. 2-15-0066
Order filed May 4, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re C.J. and P.J., Minors,	)	Appeal from the Circuit Court
	)	of Winnebago County
	)	
	)	Nos. 09-JA-452
	)	10-JA-168
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Pierre J., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw would be granted where no credible argument could be made that trial court's decisions regarding respondent's fitness to be a parent or the best interests of the minors were contrary to the manifest weight of the evidence and no other meritorious issue existed for counsel to raise on appeal; trial court's judgment would be affirmed.

¶ 2 Respondent, Pierre J., appeals a series of orders of the circuit court of Winnebago County terminating his parental rights to the minors, C.J. and P.J.[1] Respondent's appointed appellate attorney now seeks leave to withdraw from this case in accordance with the procedures set forth

[1] On the court's own motion, we will use initials to refer to the minors.

in *Anders v. California*, 386 U.S. 738 (1967), and *People v. Lee*, 251 Ill. App. 3d 63 (1993). We grant counsel's request and affirm the judgment of the trial court.

¶ 3 Counsel avers that she has "carefully read the entire record," researched "applicable statutes and case law," but has identified no issue of arguable merit. Counsel has prepared a memorandum outlining several issues that she determined were frivolous. She provided respondent with a copy of his motion and memorandum by certified mail. We, too, have notified respondent of counsel's motion. Respondent filed a response asking that we deny the motion to withdraw. In her motion, counsel discusses two main issues: whether the trial court's decision that respondent is an unfit parent is contrary to the manifest weight of the evidence and whether its decision that it is in the minors' best interests that respondent's parental rights be terminated is against the manifest weight of the evidence.

¶ 4 Regarding the first issue, counsel notes that respondent was found unfit on five separate grounds. A proper finding of unfitness on any single one of these grounds is sufficient to deem respondent unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 820 (2004). Thus, to successfully challenge the trial court's determination that he is unfit, respondent would have to demonstrate that each of the five findings is contrary to the manifest weight of the evidence. *In re A.B.*, 308 Ill. App. 3d 227, 240 (2004). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id*.

¶ 5 Counsel discusses all five findings of unfitness and concludes that a credible argument could not be made that the trial court's decision regarding any of them is against the manifest weight of the evidence. We agree with counsel. For example, the fifth count alleged that respondent was depraved, as defined by the controlling statute. For the purposes of parental fitness, the statute states that a rebuttable presumption of depravity arises, *inter alia*, where "the

parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2014). "Depravity" is defined as " 'an inherent deficiency in moral sense and rectitude.' " *In re Abdullah*, 85 Ill. 2d 300, 305 (1981) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)).

¶ 6 The State introduced evidence of six felony convictions. Two of these convictions occurred within five years of the filing of the petition to terminate respondent's parental rights. This was sufficient to raise the rebuttable presumption that respondent is depraved. See 750 ILCS 50/1(D)(i) (West 2014). There is little in the record to rebut this presumption—surely not enough to allow appellate counsel to construct a credible argument that an opposite conclusion to the trial court's is clearly apparent. In fact, there is additional evidence that confirms the presumption. We note that respondent was incarcerated in 2009, released in January 2013, arrested in June 2013, and convicted of delivery of a controlled substance on May 27, 2014 (720 Ill. 2d 570/402 (West 2012)). On several occasions, when case workers attempted to bring the minors to visit respondent in prison, visits were not possible because respondent was in segregation because he got in fights with other inmates.

¶ 7 In sum, given the state of the record, there is little appellate counsel could do to demonstrate that the trial court's judgment is contrary to the manifest weight of the evidence. As noted above, any single ground is sufficient to sustain the trial court's ultimate judgment. *Tiffany M.*, 353 Ill. App. 3d at 820. We will not, therefore, discuss the other four additional grounds upon which the trial court also found respondent unfit, though we agree with counsel's assessment of them.

¶ 8 Turning to the best interests of the minors, we also agree with counsel's determination that no meritorious argument could be made that the trial court's decision is contrary to the manifest weight of the evidence. The best-interests determination is guided by the following statutory factors:

> "(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, including:
>
> > (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
> >
> > (ii) the child's sense of security;
> >
> > (iii) the child's sense of familiarity;
> >
> > (iv) continuity of affection for the child;
> >
> > (v) the least disruptive placement alternative for the child;
>
> (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 2014).

By the time of the best-interests phase, respondent had already been found unfit, so the focus of the hearing is upon the minors. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Therefore, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id*. We again review the trial court's decision using the manifest-weight standard. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. To succeed at this point, respondent would have to establish that an opposite conclusion to the trial court's is clearly apparent. *A.B.*, 308 Ill. App. 3d at 240.

¶ 9 The following is taken from the testimony presented during the best-interests hearing. The foster family with which the minors are currently placed works with children that have specialized needs. One of the minors, P.J., had behavioral issues, such as stealing things at school and "eating certain objects." The minor receives counseling. The foster family has been involved in addressing these issues. Conversely, the minor's biological parents have not been involved in the counseling. Both minors are placed with the family, which consists of the minors, the two parents, two biological children, and a niece. The children get along well. The family expresses affection towards each other. C.J. also began exhibiting certain behaviors and receives counseling. The minors are involved in basketball. Since May 2014, the foster family has provided for all of the minors' needs, and the minors have had no contact with their biological parents. The foster parents are committed to adopting the minors. The minors refer to the foster parents as mom and dad.

¶ 10 Thus, the evidence indicated that the foster parents were providing for the safety, welfare and needs of the minors. 705 ILCS 405/1-3(4.05)(a) (West 2014). The minors' identity,

familiarity, sense of attachment, sense of security, and sense of affection all lie with the foster family. 705 ILCS 405/1-3(4.05)(b), (c), (d) (West 2014). It is apparent that the minors' feel love in the foster family. 705 ILCS 405/1-3(4.05)(d) (West 2014). Given P.J.'s behavioral issues, a case worker testified that permanence and stability were particularly important. 705 ILCS 405/1-3(4.05)(g) (West 2014). The foster parents desire to adopt. 705 ILCS 405/1-3(4.05)(i) (West 2014). Thus, the trial court's determination was supported by ample evidence, and it appears to us that counsel could not make a reasonable argument to the contrary.

¶ 11 Respondent has submitted a response in opposition to counsel's motion to withdraw. In it, he states that he was incarcerated from August 12, 2009, to January 25, 2013, and from June 4, 2013, until March 4, 2015. He states he "never really had a chance to father [his] two children." We note that his lack of opportunity to be a father to the minors was the result of his choice to engage in criminal conduct. He notes that he completed a number of classes while incarcerated. This is admirable; however, given respondent's six felony convictions, it is an insufficient basis for an attorney to argue, for example, that the presumption of depravity (as explained above) had been rebutted. Most importantly, respondent states that he loves the minors and wants to be a father to them. We do not doubt this. Moreover, this is directly relevant to two factors set forth in the statute governing best-interests determinations. See 705 ILCS 405/1-3(4.05) (West 2014). However, there are 10 such factors, and a number of them weigh heavily against respondent. *Id.* Additionally, the foster parents also love and want the minors, so, these two factors favor neither respondent nor the foster parents. Hence, we do not see how counsel could make a credible argument that the trial court's decision was contrary to the manifest weight of the evidence.

¶ 12 Therefore, having reviewed the record ourselves, we grant counsel's motion to withdraw. The judgment of the circuit court of Winnebago County is affirmed.

¶ 13 Affirmed.