2015 IL App (2d) 150259-U
No. 2-15-0259
Order filed June 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re STORMIE D. K., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JA-0254
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Alfunzo C.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw granted where there were no issues of arguable merit regarding the trial court's findings that respondent is unfit and that it is in the minor's best interests for parental rights to be terminated.

¶ 2 On February 13, 2015, the trial court found that the State had established by clear and convincing evidence that respondent, Alfunzo C., is an unfit parent to his daughter, Stormie K., and that it is in the child's best interests that his parental rights be terminated. Respondent appeals.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies

to termination cases). The attorney states that he has read the record and has found no issues of arguable merit. Further, the attorney supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded.

¶ 4 For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue either that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of his parental rights is in not the children's best interests. A trial court's unfitness finding will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 5 Here, the trial court found respondent unfit on all five grounds alleged in the State's petition to terminate parental rights. We, however, need not consider all of the grounds under which the trial court found respondent unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the court's finding. *Id.* at 350. We have reviewed the record and, at a minimum, the court's finding that respondent is depraved is not contrary to the manifest weight of the evidence. 750 ILCS 50/1(D)(i) (West 2010). Section 50/1(D)(i) provides:

> "There is a rebuttable presumption that a parent is depraved if 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." (Emphasis added.) 750 ILCS 50/1(D)(i) (West 2010).

Here, it was undisputed that respondent was convicted of at least three felonies, *all* within five years of the 2014 filing of the petition to terminate his parental rights. Specifically, the State presented evidence reflecting that, in 2010, respondent pleaded guilty to possession with intent to deliver a controlled substance (a class 1 felony) and unlawful possession of a firearm by a street gang member (a class 2 felony). He was sentenced to eight years' imprisonment for those two offenses. In 2014, respondent pleaded guilty to possession of a controlled substance (heroin) (a class 4 felony) and was sentenced to three years' imprisonment.

¶ 6 The remaining question, therefore, is simply whether the court's finding that respondent did not rebut the depravity presumption was contrary to the manifest weight of the evidence. The supreme court has defined depravity as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). A parent's depravity may be shown by "a series of acts or a course of conduct that indicates a moral deficiency and an inability to conform to accepted morality." *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). In determining depravity, the court is required to "closely scrutinize the character and credibility of the parent." *In re J'America B.*, 346 Ill. App. 3d 1034, 1036 (2004).

¶ 7 Here, the court's finding that respondent did not rebut the depravity presumption is not contrary to the manifest weight of the evidence, *i.e.*, the opposite conclusion is not clearly evident. At the unfitness hearing, the evidence reflected that respondent was taking drug and parenting classes in prison, he had expressed a desire for visitation, and that he had reasoned that, by pleading guilty to the 2014 charges, he would be released from prison sooner and could return to parenting. However, despite this evidence, the court found that, although respondent learned that he was Stormie's father after his release from a term of imprisonment, he did not

respond to letters sent by the caseworker or appear at scheduled meetings. Specifically, paternity tests returned in February 2013, and, by March 2013, respondent was notified that he was Stormie's father. Nevertheless, between May and October 2013, the caseworker sent respondent monthly letters, which respondent did not answer. In late October 2013, respondent contacted the caseworker and attended a meeting to discuss the case. However, from November 2013 on, there was no contact between respondent and the caseworker, and respondent was again incarcerated by February 2014. Finally, respondent never completed any services, had any visitation with Stormie, or provided her with items, such as cards or gifts. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 599 (2004) (presumption of depravity not rebutted where the father's convictions included seven felony arrests and the father failed to complete any of the services required by the service plans); *c.f.*, *In re J.A.*, 249 Ill. App. 3d 553, 563 (2000) (depravity presumption rebutted where the father had constant contact with his children, sometimes visiting more than the service plan recommended, and he was a constant support to them, financially and emotionally). In sum, there is no arguable merit to a claim that it was unreasonable for the court to find respondent unfit on depravity grounds and, therefore, appellate counsel would not be able to raise a meritorious argument challenging the unfitness finding.

¶ 8 Similarly, we conclude that there is no arguable merit to a claim that it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the child's best interests. See *In re Janira T.*, 368 Ill. App. 3d at 894. In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2010)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love,

security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*.

¶ 9 Here, the court heard testimony that Stormie was placed with her foster mother when she was one day old and has lived with her continuously since that time (Stormie was age 2½ at the hearing date). The foster mother brought Stormie to monthly visits with her maternal siblings, who were also in foster care. Stormie experienced stability in the foster home and is attached to and affectionate with her foster mother. Stormie is thriving and has had all of her needs met. The foster mother wishes to adopt Stormie. The foster mother presented the court with photographs, reflecting images of Stormie engaged in activities such as birthday parties, her daycare and school, visits with friends and extended family, vacations, and swimming. The foster mother arranged for Stormie and her siblings to have an overnight visit together on Christmas Eve so that the siblings could be together on Christmas morning. According to the caseworker, it would be detrimental to Stormie for her to be taken out of the foster home. Further, the foster mother expressed a willingness to allow respondent and his other children visitation with Stormie, as she had done with Stormie's biological mother and her children.

¶ 10 Accordingly, after examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issues of arguable merit. Thus, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 11 Affirmed.