

2015 IL App (2d) 150266-U  
No. 2-15-0266  
Order filed October 15, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23(c) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> B.W., a Minor	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 13-JA-52
	)	
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Katarina C.,	)	William J. Parkhurst,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Burke and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appellate counsel's motion to withdraw would be allowed and the judgment of the circuit court would be affirmed where no issues of arguable merit were identified on appeal concerning the court's rulings that respondent was shown to be unfit by clear and convincing evidence and that it was in the best interest of the minor that respondent's parental rights be terminated.

¶ 2 On March 10, 2015, the trial court terminated the parental rights of respondent, Katarina C., to her minor child, B.W. Respondent filed a timely notice of appeal. Attorney Ron L. Haskell was appointed to represent respondent during this appeal. Pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), Attorney Haskell sought leave to withdraw as

appellate counsel. In his motion, appellate counsel represents that he has read the full record and has not discovered any issue that would warrant relief in this court. In support of the motion, he has filed a memorandum of law which thoroughly summarizes the proceedings in the trial court.

¶ 3 Appellate counsel represents that he mailed a copy of the motion to respondent and informed her that the motion was necessary because there was no meritorious issue that counsel could raise on appeal. The clerk of this court has also notified respondent of the motion and informed her that she was afforded an opportunity to present, within 30 days, any additional matters to this court. Respondent has not filed a response within the allocated time.

¶ 4 After carefully examining the record, as well as the motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that it is not possible for him to raise any meritorious issues. The record reveals that B.W. (born July 22, 2008) was removed from respondent's home following a report that respondent sought to obtain and use illegal substances and indicated that she wanted to kill herself, all in the presence of her children.

¶ 5 In its May 2013 petition for adjudication, the State alleged that the minor was neglected and her environment was injurious to her welfare because, *inter alia*, respondent's mental health and her history of substance abuse placed the minor at risk of harm. The State also alleged that respondent had an open intact family case and failed to cooperate fully with agency services, which also placed the minor at risk of harm. On May 20, 2013, the court conducted a shelter care hearing, at which respondent was not present. The trial court found that respondent had notice and commenced the hearing. Testimony reflected that in December 2012, respondent had gone out with the minor's father for a few drinks, and when they returned, respondent wanted to use cocaine. An argument ensued; respondent also stated that she wanted to kill herself. Police were called, and respondent was transported to the hospital. Respondent had been scheduled to

attend inpatient treatment for her cocaine addiction. Between December 2012 and the hearing, respondent had continued to test positive for cocaine.

¶ 6 Following the shelter care hearing, the trial court found that the minor was neglected based on respondent's substance abuse history. The trial court found that it was a matter of immediate and urgent necessity to place the minor temporarily in the custody of the Department of Children and Family Services (the Department).

¶ 7 On June 4, 2013, the trial court conducted a hearing, during which respondent was present. The trial court scheduled an adjudicatory hearing for September 3, 2013. On that date, respondent stipulated to the State's allegation in its petition that the minor was neglected due to respondent's history of substance abuse. The State presented a factual basis that respondent admitted to a three-and-one-half year history of using cocaine and that she used cocaine three times per week; in addition, there was a situation that gave rise to the police being called to respondent's home during which the minor was present. The trial court found that a sufficient factual basis existed to support respondent's stipulation that the minor was neglected as pleaded in the State's petition. The trial court continued the matter to October 1, 2013, for disposition.

¶ 8 At the disposition hearing, respondent stipulated to being unfit and unable to care for the minor. The State presented a factual basis that respondent had ongoing substance abuse issues in that she had recently tested positive for cocaine and admitted to continued substance misuse. The trial court accepted the State's factual basis and found that respondent's stipulation was freely and voluntarily made. The trial court found respondent unfit and unable to care for the minor. The court further found that it was in the minor's best interest to make her a ward of the court and adjudicated her neglected. It placed custody and guardianship with the Department.

¶ 9 On September 16, 2014, the trial court conducted a second permanency hearing. The evidence reflected that respondent continued to abuse drugs and had missed three urine screenings. Respondent admitted to a relapse in July 2014. The trial court found respondent to have not made reasonable and substantial progress in recommended services or reasonable efforts toward a goal of return home within 12 months. The trial court specifically found that respondent had not made progress to obtain the return home goal, and that she continued to use drugs, to not engage in substance abuse treatment, or any other services as required by her service plan. The court changed the goal to substitute care pending termination of parental rights. On the same day, the State filed a petition to terminate respondent's parental rights. The State alleged that respondent was unfit in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)) and that she failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from her, or to make reasonable progress toward the return of the child, during the nine-month period from September 4, 2013, through June 4, 2014, following the trial court's adjudication of neglect (750 ILCS 50/1(D)(m) (West 2012)).

¶ 10 On January 6, 2015, the trial court commenced a hearing on the State's petition. Respondent was not present; the trial court noted that respondent had notice of the hearing and that respondent's counsel was present. Officer Brad Wicks of the Batavia police department testified that, on July 25, 2013, he responded to a call involving respondent, who had overdosed on Valium pills and was consuming alcoholic beverages. Wicks interviewed respondent, who indicated that she was a habitual user of crack and she wanted to get high. Officer Stover, with the Batavia police department, testified that, on August 11, 2013, she responded to a call involving respondent, who told Stover that she was highly intoxicated and she thought she might

have been battered but that she was not sure. Stover was called back to respondent's residence three hours later because respondent had reportedly overdosed on Valium pills. Officer James Nettnin, of the Batavia police department, testified that, on November 20, 2013, he responded to a call involving respondent, who was reported to be suicidal and attempting to electrocute herself. Cindy Weaver, a substance abuse counselor, testified that she performed an assessment of respondent on August 22, 2013, and recommended her for intensive outpatient services. Weaver also testified that on August 22 and on two subsequent occasions respondent tested positive for cocaine. Respondent continued using cocaine while undergoing substance abuse treatment. Rita Porter, a counselor and case manager, testified that she developed a treatment plan for respondent, which included monthly meetings with a psychiatrist and her case manager. Respondent met with the psychiatrist monthly, but failed to meet with her case manager. Respondent was discharged unsuccessfully from the program in April 2014. Kelly Vatianou was a program manager for Family Focus in Aurora, and during her time there, provided supportive services to respondent. Vatianou met with respondent in November 2013 to discuss parent mentoring. Vatianou observed respondent with B.W. and testified that respondent would be easily agitated and refer negatively to the foster parents and the caseworker. There was no progress; respondent never set any goals; and she had not been consistently attending visitation. Julia Stevens was B.W.'s caseworker; she testified regarding the services recommended for respondent, which included individual therapy, psychiatric treatment, medication monitoring, substance abuse treatment, parenting education, couples therapy, stable housing, and financial support for B.W. Stevens testified that respondent admitted to her on numerous times that she was addicted to crack cocaine. Respondent tested positive for drugs on multiple occasions, either by submitting to the tests or refusing to take the test. Respondent testified that she had

been sober for the past three months. Respondent testified generally to the difficulties of getting sober and attempted to clarify issues concerning counseling and treatment. Based on this evidence and more, the trial court found that the State had shown by clear and convincing evidence that respondent was unfit due to her failure to maintain a reasonable degree of concern or responsibility as to B.W.'s welfare; and her failure to make reasonable efforts to correct the conditions which were the basis for removal of B.W., or her failure to make reasonable progress toward the return of B.W. during the relevant nine-month period following the adjudication of neglect. The trial court's findings were not against the manifest weight of the evidence. See *In re Michael M.*, 364 Ill. App. 3d 598, 606 (2006) (trial court's determination of unfitness will not be overturned unless the finding was against the manifest weight of the evidence).

¶ 11 Following the determination of unfitness, the trial court conducted a best interest hearing. Julia Stevens, the assigned caseworker, testified that B.W. was currently placed in a foster home with a foster mother, foster father, their three children, and another foster child. Stevens testified that B.W. appeared safe and comfortable, and it appeared to be a very natural relationship. B.W. was doing well in school, attends church, and was active in extra-curricular activities. Rebecca Zuardo is B.W.'s foster mother, and testified that B.W. interacts with the immediate family and the extended family. B.W. is affectionate and a fun-loving, happy child, and is a delight. Zuardo testified that she and her husband and family were committed to providing for B.W.'s needs and permanency. Mona Strayve, respondent's mother, testified that she believed that B.W. should remain a part of her biological family. Respondent testified that she loved B.W. and believed it was in B.W.'s best interests that they maintain some contact with each other. On March 10, 2015, in a written "Decision on Best Interest," the trial court found that it was in B.W.'s best interest that respondent's parental rights be terminated.

¶ 12 The trial court's determination of parental unfitness or inability to care for a minor is entitled to great deference and will not be disturbed unless it is against the manifest weight of the evidence or is an abuse of discretion. *In re Kenneth F.*, 332 Ill. App. 3d 674, 677 (2002). After carefully examining the record and counsel's motion to withdraw, we agree with counsel that no meritorious issues exist that would warrant relief from this court. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Kane County.

¶ 13 As a final matter, we note that this appeal was accelerated under Illinois 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 March 17, 2015. Thereafter, respondent's counsel requested an extension to file the record on appeal and then three extensions to file his opening brief, all of which this court granted. Respondent's counsel then filed an *Anders* motion to withdraw as counsel. Respondent was given until August 16, 2015, to respond to the motion, which was 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).

¶ 14 Affirmed.