2015 IL App (2d) 150416-U
No. 2-15-0416
Order filed August 17, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re HALEY B. and ROBERT B., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-32
	)	No. 13-JA-33
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Bruce B., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson 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, Bruce B., to be an unfit parent and determined that it was in the best interests of his minor children, Haley B. and Robert B., to terminate his parental rights. Respondent appealed, and the trial court appointed counsel on his 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 he

advised respondent of his opinion. We informed respondent that he had 30 days to respond to the motion. That time has passed, and he 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 7, 2013, the State filed separate but virtually identical petitions alleging that Haley (born in 2003) and Robert (born in 2001) were neglected minors. The State alleged that the children's environment was injurious to their welfare and that they were placed at risk of harm, because: illegal drugs were sold out of the home where they resided (count I); their mother, Kimberly B.,[1] was aware that her paramour, who resided with the children, engaged in the sale of illegal drugs (count II); and Kimberly had a history of engaging in domestic violence with paramours (count III). Respondent and Kimberly waived their rights to a shelter care hearing, and the court found probable cause to believe that Haley and Robert were neglected. The court then transferred temporary guardianship and custody of the children to the Department of Children and Family Services (the Department), with discretion to place them with a responsible relative or in traditional foster care.

¶ 5 On April 19, 2013, Kimberly stipulated to count III of the petitions, and the court accordingly adjudicated the minors neglected. The State dismissed counts I and II, but the parties agreed to receive services in accordance with all counts of the petitions.

¶ 6 The matter was set for a dispositional hearing on May 17, 2013. Respondent agreed that the Department should have guardianship and custody of the children with discretion to place them in traditional foster care or with a responsible relative. Kimberly did not appear in court

[1] Kimberly subsequently consented to the children's adoption, and she is not involved in this appeal.

that day. The court held a brief hearing and determined that Kimberly was unfit. Evidence introduced at the hearing showed that Haley and Robert were residing with their maternal aunt, Edie. The court granted guardianship and custody of the children to the Department with discretion to place them with respondent, a responsible relative, or in foster care.

¶ 7 At the first permanency review on November 12, 2013, Jacquiline Martin, a caseworker, testified that Haley and Robert had been living with respondent since August and that "[t]hey seem to be doing really well." Martin requested that guardianship and custody of the children be returned to respondent. The court found that it was in the children's best interests to return guardianship and custody to respondent. The court ordered that the Department would have discretion with respect to the children's visitation with Kimberly, and the matter was set for a three-month date for possible closure of the case.

¶ 8 On November 21, 2013, the State filed motions to modify or vacate the dispositional order. According to a "concern report" filed by Children's Home and Aid, on November 15, 2013, respondent was arrested for retail theft and contributing to the delinquency of a minor. He was with his son Robert at the time, whom he apparently used as an accomplice. The report stated that Haley and Robert were residing with respondent's girlfriend while respondent was incarcerated in the county jail.

¶ 9 On November 25, 2013, respondent agreed that the Department should have temporary guardianship and custody of the children with discretion to place them with a responsible relative or in foster care. The children were then placed back with their aunt Edie. As of January 16, 2014, respondent was still incarcerated, and his attorney informed the court that he did not object to the November 25, 2013, order staying in place. The court accordingly ruled that the dispositional order entered on November 25 would remain in effect.

¶ 10 The second permanency review proceeded on June 24, 2014. No testimony was introduced at the hearing, and the report to the court is not included in the record on appeal. Respondent's counsel informed the court that respondent had been released from jail in February, was in contact with the caseworker, and had a home visit. However, counsel acknowledged that respondent "still has other services that he needs to work on." Despite counsel's request that the court not make findings as to efforts or progress, the court found that respondent had not made reasonable efforts or progress. The court determined that it was in the children's best interests to maintain the permanency goal of returning home within 12 months.

¶ 11 The court held the third permanency review on October 28, 2014. Philip Goudreau, the children's caseworker, testified that respondent was on probation[2] and was compliant with the conditions of his probation. Haley and Robert were still residing with Edie and were happy in that placement. However, Haley had refused to attend several visits with respondent because she did not want to see him. Additionally, respondent had been inconsistent with respect to visitation, having missed five visits since the last permanency review. Specifically, respondent missed three visits at the end of August, at which point Robert indicated that he did not want to see respondent anymore. Goudreau then began supervising visits, and Robert was willing to attend again. According to Goudreau, respondent had also been 40 minutes late to a visit the previous night. However, respondent was appropriate with the children during visits and appeared to a have a bond with them.

[2] An exhibit introduced into evidence at the subsequent unfitness hearing showed that on February 13, 2014, respondent pleaded guilty to retail theft, a class 4 felony, and was sentenced to probation. The State dismissed the charge of contributing to the delinquency of a child.

¶ 12 Goudreau also testified that the only service recommended for respondent was individual counseling, which respondent did not complete. According to the Department's report to the court, respondent attended two sessions in May 2014, but subsequently missed six sessions before being unsuccessfully discharged in August. At the time of the hearing, respondent had been re-referred to counseling, but that had not started yet.

¶ 13 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.

¶ 14 On November 13, 2014, Kimberly consented to the children being adopted by Edie. On January 6, 2015, the State filed petitions to terminate respondent's parental rights. The petitions alleged that respondent was an unfit parent in that he failed to: maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (count I); make reasonable efforts to correct the conditions that were the basis for the children's removal within nine months after the adjudication of neglect (count II); or make reasonable progress toward the children's return during specified nine-month periods (April 19, 2013, to January 19, 2014; January 19, 2014, to October 19, 2014; and/or April 19, 2014, to January 19, 2015) (count III). The State subsequently dismissed count II of the petitions as well as the portion of count III pertaining to the period between April 19, 2013, and January 19, 2014.

¶ 15 The unfitness hearing proceeded on February 19 and March 6, 2015. The evidence most relevant to counsel's motion to withdraw can be summarized as follows.

¶ 16 Goudreau testified that he had been the children's case manager since March 2014. After respondent was released from jail in February 2014, he did not contact Goudreau's agency for a full month. Nor did respondent attend all of his visits in March 2014. Respondent's attendance did not improve after March 2014, when adjustments were made to fit with his schedule.

Specifically, between March and August 2014, respondent missed 10 of approximately 20 visits. During that time, there were occasions where Goudreau could have accommodated respondent's schedule had respondent notified him in advance of conflicts. In August or September 2014, visits were scheduled at respondent's home. Respondent attended visits in December 2014 through February 2015. However, Goudreau was never able to move toward unsupervised visits between respondent and the children.

¶ 17 Goudreau testified that respondent was required to comply with the conditions of his probation and attend individual counseling. Although respondent was compliant with the terms of his probation, he was unsuccessfully discharged from counseling for failing to attend. Family counseling was never deemed appropriate for respondent, because he was not able to finish the individual counseling. After the goal was changed in October 2014 to substitute care pending court determination on termination of parental rights, respondent inquired about counseling services. Nevertheless, at the time of the hearing, respondent was still in need of services and was no closer to having the children returned to his care.

¶ 18 To Goudreau's knowledge, respondent had not attended any of the children's doctors' appointments since Goudreau became the caseworker. Nor had respondent been involved in the children's schooling. However, respondent occasionally inquired generally as to how the children were doing, such as when Robert had hurt his arm or when Haley was in counseling. Respondent had also provided the children with snacks during visits, had given them a few items of clothing, and had attended the administrative case reviews.

¶ 19 Haley testified that she did not really want to see respondent. She felt that she was forced by the caseworker and the agency to go to visits in the springtime and summertime of 2014. Nor did she feel safe with respondent, because he had hit her and her brother before. Additionally,

Haley testified, respondent "usually *** runs stoplights" and they "come close to getting hit." She recalled one time around the middle or end of 2013 when respondent "took too many pills" and hit a pole when he pulled out of a parking lot.

¶ 20 Respondent testified regarding his arrest for retail theft in November 2013, at which time he was on probation for a 2011 domestic violence case. He acknowledged that he took merchandise out of its packaging and put it in Robert's sweatshirt. He also acknowledged that Robert had some behavior problems at that time and was getting into trouble at school.

¶ 21 Respondent testified that Haley and Robert came to see him once a week for about 15 minutes while he was in jail. When he was released in February 2014, he was in the process of switching caseworkers, and he did not believe that it was a full month before he contacted the agency. He admitted that he missed a number of visits between February and October 2014, but he offered various reasons for doing so, including transportation problems, scheduling issues with work, and medical appointments. He believed that he may have missed around 10 visits because of medical issues and appointments. He said that he talked to the caseworker a few times about his medical appointments and tried to reschedule visits, but on two occasions the visit coordinator was on maternity leave. He acknowledged that he did not provide the caseworker with any paperwork from his doctor showing that his medical condition was causing him to miss visits. His caseworker talked to him about the necessity of attending visitation, and he felt bad for missing visits. Respondent indicated that he had improved his visitation lately, and he did not believe that he had missed visits in the last 3 or 4 months.

¶ 22 Respondent testified that he did not correspond with the children's teachers, but said that he received progress reports and report cards via e-mail. He was not aware that he was allowed to go to parent-teacher conferences or to call the school about the children. Nor was he aware

that he was allowed to go to the children's doctors' appointments. However, he would ask the caseworker about the children's health. Additionally, between February and October 2014, he would text the foster parent once a week or a couple times a week.

¶ 23 Furthermore, respondent testified that he was discharged from individual counseling for missing more than three sessions. He explained that he missed some of the sessions because of medical issues and appointments. The counselor sent him a letter stating that he needed to improve his attendance, but it was sent to the wrong address. Since the goal was changed, he had arranged for individual counseling through the probation department, and he was currently on the waiting list.

¶ 24 The court found that the State met its burden with respect to counts I and III of the petitions. Specifically, with respect to count III, the court noted that respondent was unsuccessfully discharged from counseling and had missed half of his visits between March and August 2014. Although respondent made excuses for missing those visits, he did not make up the visits. Nor was there movement toward unsupervised visits or returning the children to him. The court found respondent's credibility to be "somewhat suspect as compared to some of the other witnesses that were presented."

¶ 25 The best interests hearing proceeded on April 1, 2015. The court took judicial notice of the evidence presented at the unfitness hearing as well as a report from the case manager and a supervisor addressing the statutory factors. Haley testified first, stating that she did not want to go back with respondent and that she wanted to be adopted by her aunt. Robert declined the opportunity to testify.

¶ 26 Goudreau testified that Haley and Robert had been placed with their aunt Edie from February to August 2013 and from November 2013 to the present. Edie's three children and

paramour also resided in the home. Two of Edie's children were toddlers, and the other was about four or five years older than Robert and Haley. Haley and the other children interacted as if they were siblings. Robert's relationship with the other children was similar, and "[t]hey all seem attached to each other." Furthermore, Haley and Robert had a close relationship with their aunt. Goudreau did not have any concerns about Edie's ability to meet the children's needs, and he believed that the children should be freed for adoption.

¶ 27 Goudreau acknowledged that respondent was appropriate during visits and appeared to have a bond with the children. Specifically, they called him "dad," and he gave them physical affection. Additionally, respondent had been consistent in attending visits for the past few months and had been assigned a counselor through the criminal justice system. Robert generally attended the visits, and Haley occasionally attended. Both Haley and Robert had expressed to Goudreau that they wanted to stay with their aunt. However, they also wanted to continue having contact with respondent. Edie was willing to facilitate that contact "if it's appropriate."

¶ 28 Respondent testified at the hearing. Asked whether he believed that the children would be best off with him, he responded: "Right now, no. Um, later on down the line, possibly. I know there is still a lot of work that needs to be done." He agreed that he was not in a position to provide the children with all the care that they needed right now and said that the foster mother had been a good caretaker. He explained that the children had anger and hard feelings toward him because of the mistakes that he had made, recognizing that it would take counseling and therapy to rebuild those relationships. Respondent testified that he had been assigned a counselor at the RIC Center and that he had met with her once. He expressed his desire to have counseling with his children when they were ready for it. He explained that he currently had a

job and a home that was appropriate for the children. He believed that the court should give him more time before terminating his rights.

¶ 29 Edie testified that the children had a safe and stable home with her. The children's choice was to stay with her and to be adopted. She believed that it would be in the children's best interests for respondent's rights to be terminated.

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

¶ 31 II. ANALYSIS

¶ 32 Involuntary termination of parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2014)) 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 2014)). 705 ILCS 405/2-29(2) (West 2014); *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).

¶ 33 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 Haley's and Robert's return between

January 19, 2014, and October 19, 2014. See 750 ILCS 50/1(D)(m)(ii) (West 2014) (among the grounds of unfitness is the failure of a parent "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of" neglect, abuse, or dependency). According to our supreme court, "the benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). "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." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 34 Goudreau's testimony at the unfitness hearing established that after respondent was released from jail in February 2014, he did not contact the caseworkers for a month. Although respondent disputed that testimony and offered excuses for his delay, the trial court questioned his credibility. Furthermore, Goudreau testified that respondent missed 10 of 20 visits with his children between March and August 2014. Respondent offered various excuses for missing these visits, but the evidence showed that he was not consistent in working with his caseworker to communicate any legitimate needs to reschedule. Nor was he able to progress toward unsupervised visitation.

¶ 35 Another significant factor supporting the trial court's finding that respondent did not make reasonable progress was his failure to participate in and complete individual counseling. Respondent did not dispute that he was unsuccessfully discharged from counseling for failing to attend sessions. However, he testified that he missed some of the sessions due to medical issues

and appointments, adding that the counselor sent a letter to the wrong address warning him that he needed to improve his attendance. Be that as it may, the evidence did not show that respondent meaningfully attempted to work with his counselor or caseworker to address any legitimate obstacles that he faced in attending counseling. Respondent's failure to participate in counseling reflects a lack of reasonable progress toward the return of the children. Accordingly, the court's finding that respondent was unfit for failing to make reasonable progress between January 19, 2014, and October 19, 2014, was not against the manifest weight of the evidence, and there is no arguable issue of merit to support an appeal from that finding. We need not consider whether the State met its burden with respect to the other allegations in the petition. 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.").

¶ 36 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 Haley's and Robert'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 2014).

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.

¶ 37 The evidence showed that Haley and Robert had resided with their maternal aunt, Edie, since February 2013, with the exception of a period between August and November 2013, when they resided with respondent. Edie was willing to adopt the children, and she offered a safe and stable home for them. Furthermore, Goudreau testified that Haley and Robert got along well with Edie's children. The evidence also established that Haley and Robert wanted to be adopted by Edie; Haley, in particular, made her wishes clear to the court. Edie was apparently open to the possibility of the children maintaining a relationship with respondent.

¶ 38 On the contrary, although there was testimony that respondent had a bond with the children and that they called him "dad," respondent acknowledged that the children would not be best off with him at this point. He testified that there was "still a lot of work that need[ed] to be done," and the evidence supported that candid self-assessment. While respondent's recent efforts to visit his children and participate in counseling are commendable, the court's determination that it was in Haley's and Robert's best interests to terminate his 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.

¶ 39 III. CONCLUSION

¶ 40 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.

¶ 41 Affirmed.