2015 IL App (2d) 150507-U
No. 2-15-0507
Order filed September 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re P.C., M.C. and D.C., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 11-JA-30
	)	11-JA-31
	)	12-JA-187
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Antwon C.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Birkett 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 minors that respondent's parental rights be terminated.

¶ 2 On May 1, 2015, the circuit court of Winnebago County found respondent, Antwon C., to be an unfit parent with respect to his three minor children, P.C. (born October 6, 2008), M.C.

(born October 1, 2007), and D.C. (born June 20, 2012).[1] Subsequently, the court concluded that the termination of respondent's parental rights was in the minors' best interest, and respondent filed a notice of appeal. The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), appellate counsel has filed a motion for leave to withdraw.[2] In his motion, appellate counsel represents that he has reviewed the record but has not discovered any issue that would warrant relief on appeal. Attached to his motion, counsel submitted a memorandum of law summarizing the proceedings in the trial court, identifying any potential meritorious issues for appeal, and explaining why the issues lack arguable merit. Counsel further represents that he mailed to respondent a copy of the motion and the memorandum of law. The clerk of this court also notified respondent of the motion and informed him that he would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has past, and respondent has not presented anything to this court. For the reasons set forth below, we grant appellate counsel's motion to withdraw and affirm the judgment of the circuit court.

¶ 3 In his memorandum of law, 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 interest that respondent's parental rights be terminated is against the manifest weight of the evidence. With respect to both issues, counsel argues that no meritorious argument could be made that the bases for the trial court's findings are against the manifest weight of the evidence.

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

[2] The *Anders* procedure has been applied to proceedings to terminate parental rights. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000).

¶ 4 The Juvenile Court of 1987 sets forth a bifurcated procedure for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). Under this procedure, the State must make a threshold showing of parental unfitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). If a court finds a parent unfit, the State must then show that termination of parental rights would serve the child's best interest. See *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. We first address counsel's argument that no meritorious argument could be made that the basis for the trial court's finding of unfitness is against the manifest weight of the evidence.

¶ 5 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) lists various grounds under which a parent may be found unfit. *Antwan L.*, 368 Ill. App. 3d at 1123. The State has the burden of proving a parent's unfitness by clear and convincing evidence, and a trial court's determination of a parent's unfitness will not be reversed unless it is contrary to the manifest weight of the evidence. *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002). A decision is against the manifest weight of the evidence "if a review of the record 'clearly demonstrates that the proper result is the one opposite that reached by the trial court.' " *Brianna B.*, 334 Ill. App. 3d at 656 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 6 The State filed its motions for termination of respondent's parental rights on January 12, 2015. The trial court found respondent unfit on all five grounds alleged in the State's motions with respect to P.C. and M.C. and all four grounds alleged in the State's motion with respect to D.C. Among these grounds was that respondent is depraved pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2010)). That section provides that there is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least three felonies and at least one of the convictions occurred within five years of the filing of

the motion seeking termination of parental rights. 750 ILCS 50/1(D)(i) (West 2010). "Depravity" is defined as " 'an inherent deficiency of moral sense and rectitude.' " *In re Abdullah*, 85 Ill. 2d 300, 305 (1981) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Where, as here, the presumption of depravity is rebuttable, the parent may present evidence showing that, despite his convictions, he is not depraved. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005).

¶ 7 In the present case, the State presented certified copies of respondent's convictions of three felonies. Two of respondent's convictions occurred within five years of the filing of the motions to terminate his parental rights. Therefore, under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2010)), the State's evidence created a rebuttable presumption that respondent was depraved. At the fitness hearing, respondent's attorney suggested that, based on respondent's actions, the presumption of depravity had been rebutted. Once a party offers such evidence, the presumption of depravity ceases to exist and the State must prove by clear and convincing evidence that the respondent was unfit because of depravity. *A.M.*, 358 Ill. App. 3d at 253-54.

¶ 8 As noted above, the State presented evidence of respondent's three felony convictions. The convictions were for aggravated domestic battery, domestic battery, and aggravated battery. The victim in all three felonies was the minors' biological mother, who was pregnant when respondent committed two of the offenses. These convictions showed clear and convincing evidence of respondent's inherent deficiency of moral sense and rectitude. See *A.M.*, 358 Ill. App. 3d at 254. As a result of these convictions, defendant was in and out of prison during the pendency of the instant proceedings. At the fitness hearing, respondent testified that his most recent incarceration began on February 18, 2013, and that his expected "out date" is in August 2016. He further testified that the service plans in this case required him to participate in

services involving substance abuse, domestic violence, parenting skills, and anger management. Prior to his most recent incarceration, respondent had not completed any requested services, although he did visit with the children once a week for a period of time. Since being incarcerated, respondent registered for various services recommended in his service plan, but completed only anger-management and parenting classes. Respondent did contact the caseworker to request the resumption of visits with the children. In response, the caseworker encouraged respondent to correspond with the children as a precursor to visitation. However, respondent admitted that he never wrote to the children.

¶ 9 Based on the foregoing, we find little evidence to rebut the presumption of depravity in this case. While respondent did take some classes in prison and expressed some interest in visiting his children after his most recent incarceration, respondent's efforts were minimal and we find them insufficient to establish that he is no longer depraved. See *A.M.*, 358 Ill. App. 3d at 254. Consequently, we agree with appellate counsel that no meritorious argument could be made that the basis for the trial court's finding of unfitness is against the manifest weight of the evidence. Because only one ground of unfitness need be proven, we need not address the other grounds found by the trial court. See *Antwan L.*, 368 Ill. App. 3d at 1123.

¶ 10 As noted above, once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interest. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 882 (2010). As our supreme court has noted, at the best-interest phase, "the parent's interest in maintaining a parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interest of the minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). As with a finding of unfitness,

a trial court's best-interest finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 11 As noted above, appellate counsel contends that no meritorious argument could be made that the trial court's finding that it is in the minors' best interest that respondent's parental rights be terminated is against the manifest weight of the evidence. Whenever a best-interest determination is required, certain statutory factors shall be considered in the context of the minor's age and developmental needs. 705 ILCS 405/1-3(4.05) (West 2010). These factors include: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachment, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person or persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 12 At the best-interest phase of the proceeding, caseworker Mary Seehaver testified that D.C. was placed in a traditional foster home where he has resided for two years. Aside from D.C., the foster family consists of the foster parents and three additional children—one biological son and two other foster children. Seehaver testified that the foster family meets D.C.'s daily needs, including food, shelter, and clothing, and they ensure that the minor attends his regular doctor appointments. Seehaver described the interactions between D.C. and the other members of the household as "very positive." She stated that D.C. is attached to the family and refers to the foster parents as "mom" and "dad." The foster family has included D.C. in family functions, activities, and vacations. D.C., who was almost three years old, attends daycare and

no concerns have been reported by the facility. The foster family has indicated a willingness to provide permanency for D.C. if given the opportunity. The foster family also indicated that they will ensure that D.C. stays in contact with his other siblings. Seehaver opined that it would be in D.C.'s best interest to terminate respondent's parental rights.

¶ 13 Seehaver further testified that P.C. and M.C. have been placed in a relative foster home where they have been living for two years. Aside from P.C. and M.C., the foster family consists of the foster mother, her paramour, and the foster mother's four biological children. Seehaver testified that the foster mother meets the minors' daily needs, including food, shelter, and clothing, and she ensures that the minors attend their regular doctor appointments. Seehaver described the interactions between P.C., M.C., and the other members of the household as "very positive." P.C. and M.C., who are six and seven years old, respectively, are doing well in school. They are attached to the foster mother and have voiced a desire to remain with her. In addition, the foster mother has expressed interest in adopting the minors if given the opportunity. The foster mother also expressed a willingness to have the minors maintain contact with their other siblings. Seehaver opined that it would be in the best interest of P.C. and M.C. to terminate respondent's parental rights.

¶ 14 Christy J., D.C.'s foster mother, testified that D.C. has lived with her family since he was 10 months old. Christy testified that D.C. and her biological son, who is 12 years old, have a "very strong relationship" and frequently play sports together. Christy testified that since D.C. has been placed with her family, the family has resided in the same home and D.C. has attended the same daycare facility. According to Christy, D.C. never asks about his biological parents. Christy testified that she is willing to maintain contact between D.C. and his biological siblings.

She also indicated that she would be willing to allow the biological parents to maintain contact with D.C. as long as the visits were appropriate and she and her husband were present.

¶ 15 The foregoing evidence establishes that the foster parents are providing for the physical safety, welfare, and needs of the minors. 705 ILCS 405/1-3(4.05)(a) (West 2014). In addition, given the time the minors have spent with their respective foster families and the relationships that have developed, it is clear that the minors' identity, familiarity, sense of attachment, sense of security, and sense of affection all lie with the foster families. 705 ILCS 405/1-3(4.05)(b), (c), (d) (West 2014). It is also apparent by the testimony presented at the best-interest phase that the minors' feel love in their respective foster families. 705 ILCS 405/1-3(4.05)(d) (West 2014). Although D.C. is too young to express his wishes, the two older minors have expressed a desire to remain with their foster mother. 705 ILCS 405/1-3(4.05)(e) (West 2014). Further, D.C. is doing well in daycare and the older children are doing well in school. 705 ILCS 405/1-3(4.05)(f) (West 2014). Finally, the foster families have expressed a desire to adopt the minors. 705 ILCS 405/1-3(4.05)(i) (West 2014). In light of the foregoing, the trial court's determination that it was in the minors' best interest that respondent's parental rights be terminated was supported by ample evidence. As such, we conclude that the trial court's finding at the best-interest phase was not against the manifest weight of the evidence, and counsel could not make a reasonable argument to the contrary.

¶ 16 III. CONCLUSION

¶ 17 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and the relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Therefore, we allow the motion

of appellate counsel to withdraw in this appeal, and we affirm the judgment of the circuit court of Winnebago County finding respondent unfit and terminating his parental rights to the minors.

¶ 18 Affirmed.