2015 IL App (2d) 150811-U
No. 2-15-0811
Order filed December 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.B.P. and A.J.P., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 13-JA-323
	)	13-JA-324
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Jamie M., Respondent-Appellant).	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff 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 August 10, 2015, the circuit court of Winnebago County found respondent, Jamie M., to be an unfit parent with respect to her two minor children, A.B.P. (born April 26, 2004) and A.J.P. (born February 21, 2009).[1] Subsequently, the court concluded that the termination of

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

respondent's parental rights was in the minors' best interest. Respondent then filed a notice of appeal.

¶ 3 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), appellate counsel has filed a motion for leave to withdraw. Counsel avers that after "carefully read[ing] the entire record" and researching applicable law, she is unable to identify any meritorious issues to be raised on appeal which would warrant relief by this court. Counsel has submitted a memorandum outlining issues that she determined lacked merit. Counsel further avers that she has served respondent with a copy of the motion by certified mail at respondent's last known address and notified respondent of her opportunity to present additional material to this court within 30 days. The clerk of this court also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, 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.

¶ 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 2014). 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 minor's best interest. See *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. In her memorandum, appellate counsel presents two main issues: (1) whether the trial court's finding that respondent is an unfit parent is against the manifest weight of the evidence and (2) whether 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. Counsel discusses the evidence in the record and explains why she believes these issues lack merit. We have reviewed the record, and, given the deferential standard of review applicable to such issues (see *In re J.L.*, 236 Ill. 2d 329, 344 (2010); *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶¶ 29, 41), we agree with counsel's assessment. 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. As the grounds for finding unfitness are independent, evidence supporting any one of the alleged statutory ground is sufficient to uphold a finding of unfitness. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2014); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. As such, 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. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. 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.' " *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 6 In its motions for termination of respondent's parental rights, the State set forth four grounds of unfitness: (1) failure to maintain a reasonable degree of interest, concern, or

responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her within any nine-months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) failure to make reasonable progress toward the return of the minors to her within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (4) failure to protect the minors from conditions in the minors' environment injurious to the minors' welfare (750 ILCS 50/1(D)(g) (West 2014)). The trial court found respondent unfit on all four grounds alleged in the State's motions.

¶ 7 As noted in the preceding paragraph, among the grounds of unfitness found by the trial court was that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). Since the language of section 1(D)(b) is in the disjunctive, any one of the three individual elements, *i.e.*, interest *or* concern *or* responsibility, may be considered by itself as a basis for unfitness. 750 ILCS 50/1(D)(b) (West 2014); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. In determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, a court considers a parent's efforts to visit and maintain contact with the child as well as other indicia, such as inquiries into the child's welfare. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Completion of service plans may also be considered evidence of a parent's interest, concern, or responsibility. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. The court must focus on the parent's efforts, not on his or her success. *Syck*, 138 Ill. 2d at 279; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. In this regard, the court examines the parent's conduct concerning the children in the context in which it occurred. *Syck*, 138 Ill. 2d at 278; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Accordingly, circumstances such

as difficulty in obtaining transportation, poverty, actions and statements of others that hinder visitation, and the need to resolve other life issues are relevant. *Syck*, 138 Ill. 2d at 278-79; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Furthermore, if personal visits with the children are somehow impractical, other methods of communication, such as letters, telephone calls, and gifts, may demonstrate a reasonable degree of interest, concern, or responsibility, "depending upon the content, tone, and frequency of those contacts under the circumstances." *Syck*, 138 Ill. 2d at 279. We are mindful, however, that a parent is not fit merely because he or she has demonstrated *some* interest or affection toward the children. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Rather, the interest, concern, or responsibility must be objectively reasonable. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31.

¶ 8 Turning to the present case, the only witness to testify at the fitness phase of the hearing was Ashley Daily, a caseworker with Children's Home and Aid. Daily noted that the minors came into care in 2013 and respondent last visited them in January 2014. Daily testified that she was assigned to the case in July 2014. At that time, neither respondent nor the minors' biological father had contacted the agency in several months. Daily related that she did not have contact information for the parents and her initial attempts to locate the parents were unsuccessful. In August 2014, Daily learned that the parents were incarcerated in Texas. Daily conducted an internet search, found addresses for the parents in Texas, and sent letters to them each month.

¶ 9 Daily testified that her first contact with respondent occurred in December 2014, when respondent called her and completed an integrated assessment. Daily explained that an integrated assessment is used to identify the services in which a parent needs to engage. Daily noted that the integrated assessment is normally completed as soon as the case comes into care.

Following the December 2014 contact, Daily continued to send letters to respondent, but did not receive regular responses. In April 2015, however, respondent contacted Daily again. According to Daily, respondent was confused as to why Daily was still writing to her. Respondent thought that since the permanency goal had been changed from return home to substitute care pending determination of termination of parental rights, she was no longer required to complete any services or remain in contact with the caseworker.

¶ 10 Daily also testified about the service plans developed for respondent. Daily explained that a service plan outlines the services that are recommended for each parent, child, and the agency assigned to the case. The service plan is graded every six months during an administrative case review. Normally, the service plan is created based upon the integrated assessment completed by the parent. In cases in which the parent does not timely complete an integrated assessment, such as respondent's case, the services are based on information included in the case file. Daily testified that because respondent lived out of state, she contacted the Texas Department of Human Services and gathered information on services available in respondent's area. Daily then forwarded the information to respondent. Daily identified for the record the three service plans developed for respondent in January 2014, July 2014, and December 2014, and the plans were admitted into evidence. Daily testified that she never received any information from respondent as to what services, if any, she completed, and that respondent was rated unsatisfactory overall on the service plans. Daily also recounted that respondent did not inquire how the minors were doing during her contacts with respondent.

¶ 11 Daily noted that the service plans require the parents to maintain contact with her and provide updated information, in part, so that the service plans can be provided to the parents and so that the parents can be invited to the administrative case reviews. Daily testified that neither

respondent nor the minors' biological father participated in the administrative case reviews. Daily also noted that since she became the caseworker in July 2014, the parents have been unable to move towards unsupervised visits or placement of the children with them because of their minimal contacts with the agency and the minors, as well as the parents' failure to complete any services outlined in the service plans.

¶ 12 The foregoing evidence establishes that respondent failed to make reasonable efforts to visit or maintain contact with the minors, inquire into the minors' welfare, or complete the service plans developed for her. As noted, the minors came into care in 2013. At that time, respondent was supposed to complete an integrated assessment to identify services for her, but she failed to do so. In January 2014, respondent stopped visiting the children. At some point, respondent also ceased communicating with the agency handling the case. Subsequent attempts to locate respondent were unsuccessful. In August 2014, the caseworker learned that respondent had relocated Texas and was incarcerated. The caseworker wrote to respondent monthly, contacted Texas authorities regarding services available to respondent, and forwarded that information to respondent. Although respondent eventually completed the integrated assessment and the caseworker developed a service plan, respondent's contact with the caseworker was sporadic. More significant, respondent failed to inform the caseworker of what services, if any, she completed (thereby resulting in an overall unsatisfactory rating), she did not ask the caseworker about the minors' well-being, and she did not participate in the administrative case reviews. In light of this evidence, counsel could not make a colorable argument that the trial court's finding that respondent is unfit pursuant to section 1(D)(b) of the Adoption Act is against the manifest weight of the evidence. Since evidence supporting any one of the alleged statutory

ground is sufficient to uphold a finding of unfitness, we need not address the remaining grounds of unfitness found by the trial court. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30.

¶ 13 Having concluded 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, we turn to the trial court's best-interest determination. As noted earlier, once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interest. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. As our supreme court has noted, at the best-interest phase, "the parent's interest in maintaining the 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). Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a minor's best interest. These considerations include: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with parental figures; (5) the minor's wishes and goals; (6) community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like the fitness determination, we review the trial court's best-interest finding under the manifest-weight-of-the-evidence standard. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41.

¶ 14 Daily, respondent, and the biological father testified at the best-interest phase. The record establishes the following based on the testimony of the witnesses and the other evidence

presented at the hearing. When the minors came into care in July 2013, they were placed with the paternal grandmother. The minors resided with the paternal grandmother for almost two years. In June 2015, an "allegation" was lodged against the paternal grandmother and the minors were placed with the current foster family. Although that allegation was determined to be unfounded, the paternal grandmother was unable to reassume care of the minors due to health problems. The current foster family consists of the minors' paternal aunt, her husband, and the couple's four-year old daughter. According to Daily, the transition from the paternal grandmother's residence to the home of the current foster family was "pretty seamless" since they are all family members and have been involved simultaneously in the minors' lives. Daily noted, for instance, that the minors stayed with the foster mother every other week during their placement with the paternal grandmother and the foster mother would frequently visit the minors at the paternal grandmother's home.

¶ 15 Daily conducted biweekly visits of the foster home. She described the foster mother's interaction with A.B.P. as patient and noted that she uses redirection as a method of discipline. During these visits, Daily has observed A.B.P. come to the foster mother for questions or problems. Daily opined that the relationship between A.B.P. and the foster mother is "very loving." Daily also testified that the minors have a good relationship with the foster father and the foster sibling and that neither of the minors have mentioned the biological parents to her.

¶ 16 The record also reflects that the minors have special needs and attend counseling. A.B.P. has an individualized education program (IEP) for a specific learning disorder. A.J.P. was diagnosed with attention deficit hyperactivity disorder (ADHD). A.J.P.'s diagnosis was made when the foster mother consulted medical professionals after observing the minor pick his skin. A.J.P. has since begun to take medication to treat his condition. Daily noted that because of the

minors' special needs, stability is important for them. Daily opined that the foster mother has provided the minors the structure they need by remaining patient with them and by establishing a set schedule. Moreover, Daily testified that the foster family resides in the same school district as the paternal grandmother who previously cared for the minors. Thus, the minors will attend the same school and be able to maintain the same friendships

¶ 17 Daily testified that A.B.P. expressed a desire to stay in the foster home. Daily stated that it was more difficult to discuss A.J.P.'s wishes given his young age. Nevertheless, based on her conversations with A.J.P. and her observations of the minor, she opined that A.J.P. is "very comfortable" in the foster home. Daily noted that the foster parents have expressed an interest in adopting the minors. She also noted that the minors' counselor believes that it is in the minors' best interest to stay with the foster parents because they can provide the children a stable environment.

¶ 18 The record further establishes that respondent's last in-person visit with them was in January 2014, when she relocated to Texas. Following the move, respondent regularly spoke to the children by telephone until August 2014. Respondent never sent the children any cards or letters, she did not contact the caseworker to inquire about the minors, and she failed to engage in any services outlined in her service plan. In October 2014, the court entered an order prohibiting respondent and the biological father from contacting the children after behavioral issues arose as a result of prior contacts between the parents and the minors. At the time of the best-interest hearing, respondent was not working and she was residing with friends. Respondent testified that the biological father has steady employment and would do a "very good job" at providing the minors food and clothing. However, respondent acknowledged that the biological father only occasionally stays with her.

¶ 19 As the foregoing reflects, the minors have bonded with their foster parents and the foster parents consistently attend to the minors' individual needs. The minors are comfortable in their placement, the older child has expressed interest in remaining there, and the foster parents have expressed interest in adopting the minors. In contrast, it is unclear that respondent will be able to provide for the minors' daily needs or the stable and safe environment they deserve. Given this record, a nonfrivolous argument cannot 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.

¶ 20 Prior to concluding, we briefly address one other potential issue alluded to by appellate counsel. At the beginning of this case, respondent's attendance at court proceedings was irregular. Respondent's court-appointed attorney filed a motion to withdraw in April 2014, citing respondent's failure to appear in court as well as her failure to communicate and cooperate with counsel. The trial court granted the motion in October 2014. The fitness hearing in this case began on May 22, 2015. Respondent was not initially present on that date, but entered the courtroom during the argument phase of the fitness hearing, after the parties had rested. At that time, the court re-appointed the same attorney to represent respondent. Respondent's attorney did not move to reopen the fitness portion of the termination hearing. However, it does not appear to us that a nonfrivolous argument could be made based on counsel's failure to reopen the fitness phase of the termination hearing. Quite simply, based upon a consideration of the totality of the evidence presented, the outcome of this case would not have been different had such a motion been granted. As was demonstrated at the best-interest phase of the proceeding, respondent admitted that she stopped visiting the minors in January 2014 and that her telephone contact ceased after August 2014. Respondent also admitted that she did not send any cards or

letters to the children and she did not complete any services or maintain contact with the caseworker. Under these circumstances, an argument challenging counsel's failure to reopen the fitness phase of the termination hearing would not be successful.

¶ 21 III. CONCLUSION

¶ 22 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 her parental rights to the minors.

¶ 23 Affirmed.