

2015 IL App (2d) 150934-U
No. 2-15-0934
Order filed December 28, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> JALISA G., a Minor)	Appeal from the Circuit Court
	)	of Winnebago County.
)	
	)	No. 12-JA-422
)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Lisa I., Respondent-	)	Mary Linn Green,
Appellant, and Javier G., Respondent.)	)	Judge, Presiding.

<i>In re</i> JAVIER G., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
)	
	)	No. 12-JA-423
)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Lisa I., Respondent-	)	Mary Linn Green,
Appellant, and Javier G., Respondent.)	)	Judge, Presiding.

<i>In re</i> MARIAH G., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
)	
	)	No. 12-JA-424
)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Lisa I., Respondent-	)	Mary Linn Green,
Appellant, and Javier G., Respondent.))	Judge, Presiding.

<i>In re</i> CARMEN G., a Minor)	Appeal from the Circuit Court
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)	of Winnebago County.
)	
)	No. 12-JA-425
)	
(The People of the State of Illinois, Petitioner-)	Honorable
Appellee, v. Lisa I., Respondent-	)	Mary Linn Green,
Appellant, and Javier G., Respondent.)	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson 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 judgment terminating respondent’s parental rights was affirmed, where a careful review of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Lisa I., to be an unfit parent and ruled that it was in the best interests of her minor children, Jalisa G., Javier G., Mariah G., and Carmen G., to terminate her parental rights. Respondent timely appealed, and the trial court appointed counsel to represent her. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel moves to withdraw.

¶ 3 In her motion, counsel states that after “carefully read[ing] the entire record” and researching applicable law, she is unable to identify any meritorious issues. Counsel supplied a memorandum of law in support of her motion. She served respondent with a copy of the motion by certified mail at respondent’s last known address and informed respondent of her opportunity to present additional material to this court within 30 days. This court also advised respondent that she had 30 days to respond to the motion, and she has not done so. For the following reasons, we grant counsel’s motion to withdraw and affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 Rather than provide a comprehensive recitation of the facts here, we briefly outline the procedural background and address the relevant facts in the analysis section below.

¶ 6 On December 17, 2012, the State filed neglect petitions with respect to Jalisa, Javier, Mariah, and Carmen.¹ Respondent waived her right to shelter care hearings and consented to temporary guardianship and custody being placed with the Department of Children and Family Services (DCFS). On February 14, 2013, respondent stipulated that her children were neglected based on an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2012)), in that respondent's paramour struck the minors or their siblings in the face with a belt. The court adjudicated the children neglected, made them wards of the court, and continued guardianship and custody with DCFS.

¶ 7 On March 10, 2015, the State filed petitions for termination of parental rights with respect to all four minors. Following an unfitness hearing that proceeded on April 9, 2015, and May 7, 2015, the court found that the State had proven by clear and convincing evidence that respondent was an unfit parent. Specifically, the court found that respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that caused the children to be in care within nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) make reasonable progress toward the return of the children within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) protect the children from an environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2012)). Following a best interests hearing, the court found that it was in the

¹ The State also filed neglect petitions with respect to respondent's two eldest daughters, but respondent's rights with respect to those daughters are not at issue in this appeal.

children's best interests that respondent's parental rights be terminated. The court terminated respondent's parental rights and granted DCFS the power to consent to adoption. Respondent timely appealed, and appellate counsel was appointed.

¶ 8

II. ANALYSIS

¶ 9 In counsel's motion to withdraw, she maintains that respondent is unable to raise a meritorious issue on appeal with respect to either the unfitness finding or the best interests finding. After reviewing the record, we agree that no issue of arguable merit exists to support an appeal.

¶ 10 The termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The State must first establish by clear and convincing evidence one ground of parental unfitness under section 1(D) of the Adoption Act. *Julian K.*, 2012 IL App (1st) 112841, ¶ 63. If the trial court finds a parent unfit, it must conduct a second hearing to determine, by a preponderance of the evidence, whether termination of parental rights is in the children's best interests. *Julian K.*, 2012 IL App (1st) 112841, ¶ 63. A reviewing court will not overturn a trial court's termination decision unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is apparent or the decision is unreasonable, arbitrary, or not based on evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 11 The grounds for finding unfitness under the Adoption Act are independent, and we may affirm the trial court's judgment if the evidence supports any of the grounds alleged. *In re B'Yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. Among the grounds of unfitness found by the trial court in the present case was that respondent failed to make reasonable progress toward the return of her children within nine months of the adjudication of neglect.

¶ 12 Reasonable progress is judged by an objective standard that is measured from the conditions that existed at the time custody was taken from the parent. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. This includes a parent's compliance with service plans and court directives, "in light of the condition which gave rise to the removal of the child, and in light of other conditions which later became 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). Service plans are intimately tied to a parent's progress toward the return of the children, and the failure to make reasonable progress includes the failure to substantially fulfill the terms of an established service plan. *C.N.*, 196 Ill. 2d at 217. Reasonable progress exists when the trial court can conclude that it will be able to order the children returned to respondent's custody in the near future. *A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 13 Here, the trial court concluded that respondent did not make reasonable progress toward the return of her children during all three nine-month periods after the adjudication of neglect.² The trial court noted that in the first 18 months after the adjudication of neglect, respondent only engaged in substance abuse treatment. Nevertheless, respondent did not successfully complete substance abuse treatment, as she failed numerous drug drops, was unsuccessfully discharged from inpatient treatment, and failed to attend the requisite number of AA/NA meetings. The trial court also noted that respondent began individual counseling and domestic violence services, but she was unsuccessfully discharged from both for failing to attend. Finally, the court noted that

² The nine-month periods include: (1) February 14, 2013, through November 14, 2013; (2) November 14, 2013, through August 14, 2014; and (3) May 14, 2014 through February 14, 2015.

respondent was unable to begin most of her services because she failed to remain sober for 90 consecutive days.

¶ 14 We agree with counsel that there is no issue of arguable merit with respect to the court's unfitness finding, because respondent failed to make reasonable progress toward the return of her children during *any* of the three nine month periods following the neglect adjudication. Respondent's service plan required her to participate in and complete substance abuse treatment, parenting classes, individual counseling, and domestic violence services. She was also required to obtain and maintain employment, provide safe and adequate housing, and engage in consistent visitation with her children. Respondent was consistent in visiting her children. Hannah Feldhaus, the case manager from Children's Home and Aid Society of Illinois (CHASI), however, testified at the unfitness hearing that respondent never progress to unsupervised or in-home visitation. Respondent's visitations were also suspended multiple times due to her inappropriate behavior, such as swearing, calling her children names, and yelling at her children.

¶ 15 Additionally, respondent failed to complete any other services before the permanency goal changed from return home in 12 months to substitute care pending termination of parental rights in December 2014, nearly 18 months after the February 2012 neglect adjudication. Feldhaus testified that CHASI could not refer respondent to most of the services that she was required to complete until she remained sober for 90 consecutive days. Respondent failed to maintain sobriety. She consistently tested positive for cannabis or failed to participate in the mandatory drug drops. Indeed, the record fails to show that respondent successfully passed a single drug drop during the entirety of the case, which lasted for more than two years. Respondent entered in-patient substance abuse treatment in August 2013, but she was unsuccessfully discharged "due to her uncontrollable aggression towards facility and staff."

Although respondent successfully completed outpatient treatment in June 2014, she had a positive drug drop for cocaine later that month. Finally, respondent was required to attend AA/NA meetings four times per week. At the unfitness hearing, respondent testified that she attended the requisite number of meetings for three months, but she then began attending only twice a week. She testified that she stopped attending four times a week because she “wasn’t really comfortable[] being truthful with” herself.

¶ 16 Moreover, respondent engaged in individual counseling and domestic violence services, but she was discharged from both in 2014 for failure to attend. She testified that she participated in domestic violence services for two weeks in July 2014, but she stopped attending because she “just started not focusing on [herself]” after Javier was hospitalized for suicidal ideations. She also testified that she felt it was unnecessary for her to return to complete domestic violence services because she had “not even been in a relationship of domestic violence” for a period of time. Additionally, respondent stopped attending individual counseling in June 2014 because she was assigned a new counselor. She testified that she did not attend sessions with her new counselor because the counselor was an “elderly lady” whose age “was not appropriate for [her].” Respondent failed to voice her concerns to her counselor, CHASI, or to DCFS, and instead chose not to attend her sessions. Respondent also testified that she was unemployed for the duration of the case, and she had not been looking for employment because she was trying to get into school as of January 2015.

¶ 17 The only service requirement that respondent successfully completed was parenting classes. Respondent started the classes in December 2014, the same month that the permanency goal was changed to substitute care pending termination of parental rights. She completed the requirement in February 2015. Although respondent testified that she had been engaging in

other services after the goal change, Feldhaus testified that respondent failed to provide any documentation that proved she had participated in services. Feldhaus further testified that DCFS and CHASI stopped paying for services or referring respondent to services once the goal changed. Nevertheless, respondent waited almost two years to begin and successfully complete parenting classes, despite three permanency review periods in which the trial court specifically found that respondent failed to make reasonable progress.

¶ 18 Thus, the court's finding that the State proved by clear and convincing evidence that respondent failed to make reasonable progress toward the return of the children within nine months of the neglect adjudication was not against the manifest weight of the evidence. We now turn to the trial court's best interests findings.

¶ 19 Once a parent is found unfit, the focus shifts to the child, and 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). The Act sets forth the factors to be considered whenever a best interest determination is required: "(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 2012). Also relevant in a best interest hearing are the nature and length of the minor's relationship with his or her present

caretaker and the effect that a change in placement would have upon the minor's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 20 At the best interests hearing, the court took judicial notice of the evidence and testimony from the unfitness proceedings. The court also took judicial notice of the Court Appointed Special Advocate's (CASA) June 2015 report, the case manager's reports from March and April 2015, and two reports filed by Javier's caseworker during March and April 2015.

¶ 21 The evidence at the best interests hearing showed that Carmen and Jalisa had resided together with the same foster family since January 2013.³ The foster family continually provided for all of Carmen and Jalisa's physical and emotional needs, and they offered a nurturing home environment, stability, adequate food, and medical care. Sara Mulvain, CASA for the minor children, testified that Carmen and Jalisa have a "really nice bond with [the foster family], a lot of lightness. They laugh a lot. They have a good time together." Mulvain further testified that Carmen and Jalisa are close with the foster family's children and extended family, and Carmen has developed a strong bond with another foster child living with the family. Mulvain also testified that both Carmen and Jalisa have individual education plans (IEPs). The foster mother, who works in the school system, has been "really on top of the academic part of this," in that she spends time with the children to ensure that they complete their homework. The foster parents advocate for the children in the school system. Carmen has been receiving "A" grades in her most recent years of school, and she has become a member of the school's Safety Patrol. Jalisa, who has been diagnosed with attention deficit hyperactivity disorder (ADHD), has

³ The record is unclear as to whether Carmen and Jalisa entered their foster home in January or February 2013, but it is apparent that Carmen and Jalisa have been with the same foster family for the duration of the case.

been receiving medication. Nevertheless, Mulvain testified that Jalisa's behavioral IEP has been "dropped," and she has exhibited tremendous growth. Both Mulvain and Mark Westphal, the CHASI case manager assigned after Feldhaus left the agency, testified that the foster family has signed permanency commitment papers and wants to adopt the children. Carmen and Jalisa both stated that they want to be adopted by the foster family, but they would like to be able to see their siblings and respondent. If adopted, the foster family has expressed its intention to allow the children to continue to see their siblings and respondent. Both Mulvain and Westphal testified that it would be in the minors' best interests for respondent's parental rights to be terminated and for them to be adopted by the foster family.

¶ 22 The evidence also showed that Mariah has been living with a foster mother and her natural daughter since October 2014. The foster mother continually provided for all of Mariah's physical needs and emotional support. Mulvain testified that Mariah and the natural daughter are close in age and have developed a "very close" relationship, explaining: "I see a real closeness and a real sharing of ideas and confidences between the two girls." Mariah and the natural daughter "do very well together. They like to ride their bikes, they like to do the same things, they like to work with their *** little computers." Mulvain also testified that because the natural daughter is a "straight-A student," Mariah has been encouraged by her and ended the last academic year "with all As and Bs and she's reading up a storm. So she's really thriving." Mulvain testified that the foster mother is "especially good." The foster mother "makes the homework fun, but it's also a priority because she wants the girls to excel." The foster mother encourages physical activity, takes the children on camping trips and other vacations, and takes the children to cultural events. Mulvain testified that the foster mother's extended family also takes the girls to activities in the community. The foster mother signed permanency commitment

papers and wants to adopt Mariah. Mulvain testified that although Mariah has not expressed a preference as to whether or not she wants to be adopted, she has not indicated that she wants to be returned to respondent's care. The case manager's report from March 2015, however, indicates that Mariah has stated that she wants to be adopted by her foster mother. Both Mulvain and Westphal testified that it would be in Mariah's best interests for respondent's parental rights to be terminated and for her to be adopted by the foster mother.

¶ 23 As for Javier, the evidence showed that he had been placed in a residential facility since December 2014. Betsy Sanchez, the specialized caseworker for Javier, testified that he was placed in a residential facility because he had a series of hospitalizations and needed a "higher level of care." Javier had suicidal ideations and behavioral problems that led to his hospitalizations and, ultimately, his placement in the residential facility. Javier was placed in a residential facility only after DCFS, CHASI, and Javier's service providers had exhausted all other options. Sanchez testified that Javier needed a structured environment with adults whom he could trust. Javier, who was 10 years old at the time of trial, had been diagnosed with ADHD, a mood disorder, and an oppositional defiant disorder. Javier also had an IEP in place, as he was significantly behind his grade level in academics. Sanchez testified that Javier had behavioral problems at school, and he had made threats to his former foster parents and had attempted to run away. Sanchez also testified that the agency had not been able to find a "specific identifiable adoptive home" for Javier, but had located a potential foster home in Odell, Illinois that is able to care for Javier's specialized needs. Sanchez testified that DCFS believes that it is in Javier's best interests that respondent's parental rights be terminated. Sanchez explained that Javier "really needs permanent placement" and that a return home to respondent is not possible in the near future, as respondent had failed to complete any services. Moreover, respondent will be unable

to provide the structure and stability that Javier requires, as evidenced by the chaotic visits that respondent had with her children. Sanchez also testified that if Javier is “freed for adoption,” DCFS would be able to list Javier on certain databases that can more easily find specialized foster homes that can adopt Javier and care for his needs. Sanchez testified, however, that DCFS cannot list Javier on these adoption databases until respondent’s parental rights are terminated. She further testified that Javier looks forward to visiting with his siblings and respondent, but he has never asked to return to respondent’s care.

¶ 24 Based on a careful review of the record, we agree with counsel that respondent is unable to raise an issue of arguable merit with respect to the trial court’s best interests findings. Although the record shows that respondent loves her children and has provided them with food, presents, and other items at her visitations, the evidence as a whole overwhelmingly established that it was in the children’s best interests to terminate respondent’s parental rights. Mariah, Carmen, and Jalisa are all well integrated into their foster homes, and both foster families want to adopt the children. Mariah is especially close with her foster mother’s natural daughter, and she has been “thriving” in her new home. Mariah has improved academically. Carmen and Jalisa are similarly integrated into their homes. Both have been advancing in school, and both consider themselves to be a part of the foster family, as they feel “safe” and “loved.” Jalisa initially had IEPs for behavior and academics, but the behavioral IEP has been dropped. Carmen has developed a strong bond with another foster daughter in the home and she has been improving academically. All three children have expressed their desire to be adopted by their respective foster families.

¶ 25 The evidence also established that respondent is unable to provide for Javier’s safety and development. Javier needs a structured environment with adults whom he can trust.

Nevertheless, the evidence shows that respondent cannot provide that environment, as two of the homes in which she was living have been condemned since the inception of this case. Moreover, respondent has failed to exhibit the necessary responsibility to care for Javier's specialized needs. Indeed, she failed to complete services and failed to pass a single drug drop. The record shows that respondent was unemployed for the duration of the case and was not actively seeking employment. According to the April 2015 caseworker report, Javier struggles to regulate his emotions and he mimics others' negative behaviors. Nevertheless, the record shows that respondent often had emotional outbursts in front of Javier, as evidenced by the chaotic family visits and her inappropriate behavior during visitation. Since being placed in a residential facility, however, Javier has adjusted, has been able to take responsibility for his actions, and has improved academically. If Javier is listed on the adoption databases, DCFS will be more readily able to place Javier in a suitable, specialized foster home.

¶ 26 Finally, we are mindful that the children are separated from each other and have been placed into different foster homes. The evidence in the record, however, establishes that both foster families and Javier's residential placement have facilitated and will continue to facilitate visitation between the minor children and respondent. Also, Javier will be able to be listed on an adoption database that could potentially help find an adoptive home closer to his siblings. Based on all of the evidence, the court's best interests findings were not against the manifest weight of the evidence.

¶ 27 Counsel raises one additional potential issue in her motion to withdraw, which she maintains lacks arguable merit. Counsel contends that respondent could argue that the court improperly relied on evidence of respondent's unfitness in determining the children's best

interests. According to counsel, this argument is meritless, because the court was entitled to and did properly consider the evidence in the context of the best interests hearing. We agree.

¶ 28 At the best interests hearing, Westphal testified that the children's putative biological father, Javier G., Sr., showed up unannounced to Carmen's birthday party in August 2015.⁴ The children had not had contact or visitation with the father for the duration of the case, although the father did visit Javier while he was hospitalized. Westphal testified that once the father arrived at the birthday party, the children became very emotional and started to cry. Westphal asked the father to leave, because it had previously been explained to respondent that any visitation with the children and father needed to be conducted in a therapeutic environment. Once Westphal asked the father to leave, respondent screamed at him. Mulvain's testimony revealed that respondent orchestrated the father's appearance at Carmen's birthday party. In ruling on the best interests of the children, the trial court stated that respondent's behavior concerning the incident "does not inure to the minors' best benefit. They should have been prepared to see their father if he was going to show up in that type of situation." The trial court properly looked at respondent's behavior and judgment surrounding this incident in determining the best interests of the children. See *In re D.L.*, 191 Ill. 2d 1, 12 (2000) (holding that if a respondent is found unfit under section 1(D)(m), "evidence of the parent's conduct occurring more than 12 months after the adjudication of neglect, abuse, or dependency may be introduced at the second stage of the termination proceedings, at which the court must consider the best interests of the minor involved in determining the youth's eventual placement.").

¶ 29

III. CONCLUSION

⁴ The father was also a respondent in the termination of parental rights case, but he did not contest the proceedings or otherwise become involved during the pendency of the case.

¶ 30 After examining the record, counsel's motion to withdraw and memorandum of law, we hold that this appeal presents no issue of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the Circuit Court of Winnebago County finding respondent unfit and terminating her parental rights to the minors.

¶ 31 Affirmed.