2015 IL App (5th) 140497-U

NO. 5-14-0497

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re Z.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Christian County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 08-JA-26
	)	
Joshua L.,	)	Honorable
	)	Ronald D. Spears,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determinations that the respondent was unfit and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence.

¶ 2 The respondent, Joshua L., appeals the judgment of the circuit court of Christian County terminating his parental rights to Z.H. Counsel was appointed to represent Joshua L. on appeal. Appointed counsel has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v.*

Court of Appeals, 486 U.S. 429 (1988). Joshua L. was given proper notice and was granted an extension of time to file briefs, objections, or any other documents supporting his appeal. He has not filed a response. We have considered appointed counsel's motion to withdraw as counsel on appeal and the attached memorandum. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant appointed counsel's motion to withdraw and affirm the judgment of the circuit court of Christian County.

¶ 3 We note that pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010), the decision in this case was due to be filed on or before August 24, 2014, absent a showing of good cause. Notice of appeal was filed in the circuit court on March 27, 2014, but was not transmitted to this court until October 3, 2014. On December 1, 2014, appointed counsel filed his motion to withdraw pursuant to *Anders*. This court entered an order granting Joshua L. the opportunity to respond to counsel's motion. As noted above, Joshua L. has not file a response. Based on the foregoing, we find that good cause exists for filing our decision after August 24, 2014.

¶ 4 BACKGROUND

¶ 5 Joshua L. and Krystal H. are the biological parents of Z.H.[1] Z.H. was born on November 28, 2008, and immediately taken into protective custody. On December 1, 2008, the State filed a petition for the adjudication of wardship alleging that Z.H. was neglected as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act)

[1]Krystal H. is not a party to this appeal.

(705 ILCS 405/2-3(1)(b) (West 2006)) in that both parents were registered sex offenders, that Krystal H. was bipolar and was not taking her medication, and that another child of Krystal H.'s had been removed from her care. Following a shelter care hearing, the circuit court gave temporary custody of Z.H. to the Department of Children and Family Services (DCFS).

¶ 6 The State subsequently filed two amended petitions for the adjudication of wardship. Count II of the second amended petition alleged that Z.H. was neglected in that another child of Krystal H.'s had been removed from her custody as a result of her lack of proper care, and that Krystal H. had surrendered her parental rights to the minor following the filing of a petition to terminate her parental rights to that child.

¶ 7 On November 18, 2009, the Joshua L. and Krystal H. appeared and stipulated to count II of the second amended petition for the adjudication of wardship, and the case was continued under supervision pursuant to section 2-20 of the Act (705 ILCS 405/2-20 (West 2008)). The court explained that in the event the parties violated the order of supervision, the State could seek to terminate supervision and, if the State prevailed, the court would enter an order adjudicating Z.H. neglected based on the stipulation. The court ordered the parents to complete psychological evaluations and comply with all recommended treatment and counseling, to cooperate with DCFS, and to comply with their service plans.

¶ 8 On March 24, 2010, the State filed a petition to revoke supervision, alleging that Joshua L. and Krystal H. had failed to comply with various terms of supervision, and that Joshua L. had threatened his caseworker. A hearing on the State's motion was held on

October 13, 2010. Joshua L. appeared, but Krystal H. did not appear and was found in default. The court then entered an order of adjudication finding that Joshua L. and Krystal H. had stipulated to the allegation contained in count II of the second amended petition for the petition adjudication of wardship, and that Z.H. was neglected as defined by section 2-3(1)(b) of the Act. A dispositional hearing was scheduled for November 10, 2010.

¶ 9 After several continuances, a dispositional hearing was held on May 18, 2011. By agreement of the parties, custody and guardianship was given to DCFS with a permanency goal of returning Z.H. home within 12 months. On March 15, 2012, DCFS filed a permanency report stating that Joshua L. and Krystal H. "were now refusing all services, including visits with [Z.H.]," and noted that Joshua L.'s last visit with Z.H. was on January 4, 2012. The report recommended that the permanency goal be changed to substitute care pending termination of parental rights.

¶ 10 On March 28, 2012, the State filed a petition to terminate the parental rights of Joshua L. and Krystal H. Joshua L. failed to appear at the hearing on the petition, and the circuit court, after hearing testimony, found that Joshua L. and Krystal H. were unfit and that it was in Z.H.'s best interests to terminate their parental rights.

¶ 11 Both parents filed motions to set aside the termination of their parental rights, alleging that Krystal L.'s attorney had misinformed them of the date of the hearing. The circuit court granted the motion and set a new hearing on the petition to terminate.

¶ 12 On June 28, 2013, the State filed an amended petition to terminate parental rights. The amended petition alleged that Joshua L. was an unfit person in that he (1) failed to

maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare (750 ILCS 50/1(D)(b) (West 2012)), (2) failed to protect Z.H. from conditions within her environment which were injurious to her welfare (750 ILCS 50/1(D)(g) (West 2012)), (3) failed to make reasonable progress toward the return of Z.H. within the first nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)), (4) had abandoned Z.H. (750 ILCS 50/1(D)(a) (West 2012)), (5) failed to make reasonable progress toward Z.H.'s return during the nine-month period from August 1, 2011, to May 1, 2012 (750 ILCS 50/1(D)(m)(iii) (West 2012)), and (6) failed to make reasonable progress toward Z.H.'s return during the nine-month period from May 1, 2012, to February 1, 2013 (*id.*).

¶ 13 A hearing on the amended petition to terminate was held on July 15, 2013. Through counsel, Joshua L. requested a change of venue and a continuance. When the circuit court denied these motions, Joshua L. left the courtroom. The court gave Joshua L.'s attorney an opportunity to convince Joshua L. to return to the courtroom, warning that the court would show a voluntary waiver of Joshua L.'s right to be present if he failed to do so. Joshua L. refused to return and the hearing proceeded in his absence.

¶ 14 Admitted into evidence without objection were the DCFS service plans covering the period from October 19, 2010, to April 11, 2012, and permanency hearing reports filed on February 22, 2011, July 25, 2011, February 17, 2012, and March 15, 2012. Tara Herbord, a social worker for DCFS, then testified as follows. She had been Z.H.'s caseworker since the child was born. DCFS prepared four service plans covering four different time periods. Each service plan was created with the goal of returning Z.H. to

her parents and each plan specified a number of individual goals and tasks for each parent. Joshua L.'s service plans required him to maintain stable housing and a legal means of income, attend parenting counseling, have a drug assessment and undergo random drug tests, have a sex offender assessment, and attend visitation with Z.H. The only goals Joshua L. consistently achieved were maintaining stable housing and a legal means of income because he was on disability. He did not complete parenting classes, attend counseling, or undergo drug or sex offender assessments, and he submitted to only one random drug test. Joshua L. stopped meeting with Herbord in April of 2011, and the last time he had contact with Z.H. was January 4, 2012. Visitation stopped when DCFS had a concern with a cat being in the home. Herbord explained that Z.H. was allergic to cats and DCFS suggested that visitations occur elsewhere. Joshua L. refused to have visitation elsewhere and refused any more visits that were not in his home. Joshua L. expressed no interest in further visitations.

¶ 15 The circuit court found that Joshua L. was unfit in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare, (2) failed to make reasonable progress toward the return of Z.H. within the first nine months following the adjudication of neglect, (3) failed to make reasonable progress toward Z.H.'s return during the nine-month period from August 1, 2011, to May 1, 2012, and (4) failed to make reasonable progress toward Z.H.'s return during the nine-month period from May 1, 2012, to February 1, 2013. A best-interests hearing was set for October 21, 2013.

¶ 16 Joshua L. failed to appear at the best-interests hearing, and the hearing proceeded

in his absence. Nancy Stromberg, Z.H.'s foster mother, testified as follows. She and her husband have two biological children and two foster children, including Z.H. Stromberg was employed by AT&T and her husband was employed by GSI, and they owned their own home. Z.H. had been with them since she was two days old. Z.H. called Stromberg "mama" and has a close relationship with the Strombergs' other children. Stromberg's family lived in the area. When she and her husband were at work the children who were not of school age were in daycare. Stromberg testified that she and her husband wanted to adopt Z.H.

¶ 17 Herbord testified that she had visited the Stromberg household at least once a month since Z.H. had been placed there and that Z.H. had accepted the Strombergs as her family and was happy to be with them. Joshua L. had not seen Z.H. since January 4, 2012. Herbord believed that adoption by the Strombergs was in Z.H.'s best interests.

¶ 18 At the conclusion of the hearing, the circuit court found that it was in Z.H.'s best interests to terminate the parental rights of Joshua L. and Krystal H. Joshua L.'s motion to reconsider was denied. Joshua L. appeals.

¶ 19 ANALYSIS

¶ 20 Initially, we note that although motions to withdraw as counsel on appeal pursuant to *Anders* are typically made in criminal appeals, the *Anders* procedure has been held to be applicable in cases where counsel has been appointed for indigent parents appealing the termination of their parental rights. *In re Keller*, 138 Ill. App. 3d 746 (1985).

¶ 21 The Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear

and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 22 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, (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 attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the

preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). With these standards in mind, we review of appointed counsel's motion to withdraw.

¶ 23 The first potential issue appointed counsel identifies in his motion to withdraw is whether the circuit court erred in finding Joshua L. unfit for failing to make reasonable progress towards Z.H.'s return within any nine-month period following adjudication. Appointed counsel notes that Joshua L. did not admit the allegations of the State's petition to terminate supervision, he was not found to be in default, and the court did not find that he had violated any terms of supervision. Appointed counsel contends Joshua L. could argue that because there was no basis to terminate supervision as to him, the circuit court erred in entering the order of adjudication against him, and that it therefore erred in finding him unfit for failing to make reasonable progress towards Z.H.'s return within any nine-month period following.

¶ 24 Appointed counsel argues that any such argument would be meritless, however, because Joshua L. failed to appeal the order of adjudication and because of the circuit court's finding that Joshua L. failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare. We agree. Had Joshua L wished to challenge the adjudication of neglect as to him, he had two opportunities to do so. He could have sought leave to file an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Sept. 1, 2006) from the October 13, 2010, order adjudicating Z.H.

neglected, or he could have appealed the May 18, 2011, dispositional order. Dispositional orders are final and appealable (see *In re Faith B.*, 216 Ill. 2d 1, 3 (2005)), and appealing a dispositional order is the proper way to challenge a finding of abuse or neglect (*In re Leona W.*, 228 Ill. 2d 439, 456 (2008) (citing *In re Arthur H.*, 212 Ill. 2d 441 (2004))) where interlocutory appeal has not been sought or allowed. By failing to file an interlocutory appeal from the adjudicatory order or an appeal from the dispositional order, Joshua L. forfeited any challenge to the adjudication of neglect. *In re Leona W.*, 228 Ill. 2d at 456-57; see also *In re Janira T.*, 368 Ill. App. 3d 883, 891 (2006).

¶ 25 Moreover, as noted above, a parent can be found unfit if the State proves any one of the alleged grounds of unfitness. Assuming, *arguendo*, that the order of adjudication was improperly entered as to Joshua L. and that the circuit court therefore erred in finding him unfit pursuant to sections 1(D)(m)(ii) and 1(D)(m)(iii) of the Adoption Act, the circuit court's finding that Joshua L. failed to maintain a reasonable degree of interest, concern, or responsibility as to Z.H.'s welfare is sufficient to sustain the determination of unfitness.

¶ 26 The next potential issue identified by appointed counsel is whether the circuit court's finding that the State proved by clear and convincing evidence that Joshua L. was unfit is contrary to the manifest weight of the evidence. Counsel argues, and we agree, that there is ample evidence to support the circuit court's determination.

¶ 27 With respect to the circuit court's finding that Joshua L. was unfit pursuant to sections 1(D)(m)(ii) and 1(D)(m)(iii), the benchmark for determining reasonable progress

encompasses the parent's compliance with the service plans and the court's directives, in light of the conditions which led to the minor's removal, and in light of other conditions which later became known and which would prevent the court from returning the minor to the parent's custody. *In re Joshua K.*, 405 Ill. App. 3d 569 (2010). The record reveals that Z.H. was adjudicated neglected on October 13, 2010. The DCFS service plan in effect at that time required Joshua L. to maintain stable housing and a legal means of income, attend parenting counseling, have a drug assessment and undergo random drug tests and mental health counseling, meet with the DCFS caseworker, and attend visitation with Z.H. DCFS filed permanency reports on February 22, 2011, and July 25, 2011, and a new service plan on May 2, 2011. The service plan and the reports all indicated that with the exception of maintaining stable housing and a legal source of income, and visiting with Z.H., Joshua L. had refused to complete or participate in any of his services. The April 11, 2012, DCFS case plan and the February 17, 2012, and March 15, 2012, permanency reports also state that Joshua L. refused to participate in any services, and that he had stopped meeting with his caseworker and had not visited Z.H. since January 4, 2012. Herbord testified at the hearing on parental fitness that with the exception of maintaining stable housing and a legal means of income, Joshua L. never complied with any of his service plan goals, that he had stopped meeting with her in April of 2011, and that the last time he had contact with Z.H. was January 4, 2012. The uncontroverted evidence supports the circuit court's finding of unfitness on these grounds.

¶ 28 This evidence also supports the circuit court's finding that Joshua L. was unfit based on his having failed to maintain a reasonable degree of interest, concern, or

responsibility as to Z.H.'s welfare. "In assessing a parent's fitness under this ground, a court considers a parent's efforts to visit and maintain contact with the child, as well as other indicia, such as inquiries by the parent into the child's welfare." *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35 (citing *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006)). The court should focus on the parent's efforts, not his or her success, and examine the parent's conduct in light of the circumstances in which that conduct occurred. *Id*. A parent is not fit merely because he or she demonstrated some interest in or affection toward the child. *Id*. The interest, concern, or responsibility must be objectively reasonable in light of the relevant circumstances. *Id*. A parent's efforts to complete his or her service plans may be considered as evidence of his or her interest, concern, or responsibility. *Id*.

¶ 29 As noted above, not only did Joshua L. make little effort to comply with his service plans, he stopped visiting with Z.H. after January 4, 2012. Herbord testified that Joshua L. ceased visiting Z.H. when DCFS expressed concern over the presence of a cat, to which Z.H. was allergic, in Joshua L.'s house. Joshua L. refused to get rid of the cat and refused to visit with Z.H. somewhere other than his home. Herbord testified that Joshua L. did not send Z.H. Christmas or birthday cards, presents, or make any other attempt to have any contact with her. Under these circumstances, no meritorious argument can be made that the circuit court's determination that Joshua L. was unfit was contrary to the manifest weight of the evidence.

¶ 30 The final potential issue identified by appointed counsel is whether the circuit court erred in determining that termination of Joshua L.'s parental rights was in Z.H.'s

best interests. We agree with appointed counsel that any such argument would be meritless. Z.H.'s foster mother, Nancy Stromberg, testified that Z.H. had been with her and her husband since she was two days old and that she had a close relationship with Stromberg's other children. The family is able to provide for all of Z.H.'s physical and emotional needs. Stromberg further testified that she and her husband wanted to adopt Z.H. Herbord testified that she had visited the Stromberg household at least once a month since Z.H. had been placed there and that Z.H. had assimilated into the family and accepted the Strombergs as her parents. No meritorious argument can be made that the circuit court's decision that termination of Joshua L.'s parental rights was in Z.H.'s best interest is contrary to the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, appointed counsel's motion to withdraw as counsel on appeal is granted, and the judgment of the circuit court of Christian County is affirmed.

¶ 33 Motion granted; judgment affirmed.