2015 IL App (2d) 150782-U
No. 2-15-0782
Order filed January 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re KAMRYN I., a Minor.	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 14-JA-62
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Jennifer D.,	)	William Parkhurst,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw granted where there were no issues of arguable merit regarding the trial court's findings that respondent is unable to provide educational support to the minor and that it is in the minor's best interests for residential custody to be awarded to the minor's father.

¶ 2 On July 21, 2015, the trial court, pursuant to section 2-27 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-27 (West 2014)), entered a dispositional order finding that respondent, Jennifer D., is unable to provide educational support to her daughter, Kamryn I., and that it is in Kamryn's best interest that residential custody over her be transferred to her father, David Imgrund. Respondent appeals.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See, *e.g.*, *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies to findings of parental unfitness). The attorney states that he has read the record and has found no issues of arguable merit. Further, the attorney supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that she had 30 days to respond. That time is past, and she has not responded.

¶ 4 For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue that it was against the manifest weight of the evidence for the trial court to find respondent unable to provide educational support for Kamryn or that it is not in Kamryn's best interests for Imgrund to have residential custody over her. See, *e.g.*, *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995) (applying manifest-weight standard to court's unfitness and best interest findings in a dispositional order setting).

¶ 5 Here, in May 2013, the State filed a neglect petition in De Kalb County on the basis that Kamryn (born January 2001 and, therefore, age 12 at the time of the petition) suffered from a lack of education, as evidenced by her numerous unexcused absences from school. In January 2014, the court established that Kamryn had, at that point in the school year, missed 21 days of school, and ordered her to attend school every day unless excused by a doctor or the school nurse. On May 2, 2014, the court issued a dispositional order making Kamryn a ward of the court on the basis of educational neglect. Kamryn subsequently moved to Kane County and, on May 15, 2014, the case was transferred there.

¶ 6 Thereafter, Imgrund appeared *pro se* and requested that the parties' joint custody arrangement be modified such that he would be awarded "primary" custody. The proceedings were stayed for a period after Kamryn's attendance issues were brought to the attention of Kane County's Regional Office of Education (ROE) and her case was referred to truancy court.[1] In February 2015, however, the circuit court in this case held an *in camera* interview with Kamryn, summarizing that meeting as follows:

> "*In camera* interview held. Minor advises that her mom is a good mom and encourages her to go to school and it is not mom's fault (in child's estimation) that she fails to get up in time to go. Child states that no one is enticing her to miss school. Child concedes that she *does* attend school when she is at her Dad's house." (Emphasis added.)

¶ 7 In June 2015, the court commenced a dispositional hearing. Evidence at the hearing reflected that Kamryn's attendance issues had required intervention by the ROA, which classified her case as "highest priority," given her past and continued attendance issues and her special education classification as emotionally disturbed (due to her difficulty developing relationships with peers; she has an easier time associating with adults than peers). As Kamryn has an individualized educational plan (IEP), her school scheduled a meeting to determine what services she needed. Although respondent was notified, she failed to appear at the meeting. She

[1] The truancy petition was assigned case No. 15-J-7. Kamryn ultimately stipulated to one count of the petition and was adjudicated a truant minor in need of supervision. She was placed on a one-year term of supervision, ordered to attend school every day, and ordered to attend counseling. Kamryn and her parents were ordered to participate in the support and services provided by the school and ROE, and the custodial parent (whoever that might be at the time) was ordered to accompany Kamryn to both school and counseling.

also failed to appear at the re-scheduled meeting. When the school saw respondent picking up Kamryn from school, it was able to obtain her signature authorizing proposed testing; however, respondent did not appear at the meeting that was scheduled to review the testing results and to obtain her agreement to provide the recommended services to Kamryn. A second meeting was set up for this purpose, but respondent again did not appear. Following the second non-appearance, the school (for the first time) contacted Imgrund, and, within one week, he had appeared and signed appropriate authorizations. Services were implemented with the goal of re-engaging Kamryn back into school and increasing her attendance. Kamryn and respondent signed an attendance contract requiring that Kamryn attend school consistently, unless a doctor's excuse could be provided and/or her symptoms included projectile vomiting and a temperature of 102 degrees or higher. If lesser symptoms were present, Kamryn was to report to the school nurse upon her arrival at school and the nurse would decide whether Kamryn would remain at school or be sent home. Despite this agreement, no improvement in attendance was observed. Another meeting was scheduled for ROE to determine if sufficient interventions had been provided or whether it should pursue legal action in the form of a truancy petition. Respondent did not attend that meeting. Imgrund did attend the meeting. In total, Kamryn missed 82 out of 172 school days in the 2014-2015 school year, with only 8 absences medically excused.[2]

¶ 8 A ROE officer, Joshua Axelsen, testified that he was "extremely concerned" about Kamryn, was further concerned that respondent was failing to provide Kamryn with educational support, and that, although Kamryn was very bright and maintained grade-level achievement, her absences were causing her to fall further behind and were preventing her from fulfilling her full

[2] According to Axelsen, under Illinois law, a student who has more than nine unexcused absences is considered a chronic truant.

potential. In his opinion, respondent was unable to provide the educational support that Kamryn required. In contrast, the middle school assistant principal had reported that, during a two-week period in the spring, he had observed Kamryn and Imgrund in the school parking lot every morning and that she had attended school every day that period. The assistant principal believed that Imgrund had control of Kamryn during that time. Axelson expressed his belief that Imgrund is willing and able to provide educational support to Kamryn, as he appeared at every scheduled meeting of which he was notified, he ensured Kamryn's school attendance when in custodial control, and he had been proactive about her attendance problems.

¶ 9 Kamryn's appointed CASA representative, Lisa B., testified, in sum, that she has been assigned to Kamryn's case for 10 months and that there were consistent concerns about Kamryn's attendance. Respondent had informed Lisa that Kamryn was often tired in the morning and did not want to go to school and, rather than fight with her, respondent often gave in and let her stay home. Lisa was concerned that Kamryn, not respondent, was the decisionmaker concerning school attendance. Lisa confirmed that Imgrund was very concerned about Kamryn's school attendance and he had often taken direct action to get Kamryn to school when he learned that she was absent or tardy. For example, he would telephone the school to see if she was in attendance and, if not, would drive to Elburn to get Kamryn to the school. Lisa opined that the court should change Kamryn's placement because respondent is willing, but unable, to provide educational support. In her opinion, Imgrund was both willing and able to provide the necessary educational support. Lisa confirmed that ROE had recommended a course of counseling for Kamryn, which had only commenced two days prior to the dispositional hearing and that both Kamryn and respondent had attended the initial session. However, this was the third counseling attempt, with the first two efforts not having been completed. She

confirmed that Kamryn has a loving relationship with respondent and, on more than one occasion, had expressed her wish to remain in respondent's care. Further, Kamryn has a very close relationship with a younger brother, with whom she lives, and a close relationship with respondent's parents, who live near respondent's home. Nevertheless, Kamryn had not indicated to Lisa a fear of or lack of love for Imgrund.

¶ 10 Respondent testified that she missed numerous meetings with ROE primarily due to the fact that she does not have a driver's license.[3] Respondent agreed that there was no good reason for a child to miss almost half of the scheduled days in a school year. She explained that Kamryn's absences were due to a combination of Kamryn having difficulty getting up in the morning and not liking school, and respondent's lack of a driver's license to take Kamryn to school if she missed the bus. Respondent denied that she simply "gives up" during the process of getting Kamryn to school. Respondent testified that she always tries, but sometimes they argue to the point where Kamryn is either crying or so mad that respondent figures that, because of the conflict, Kamryn would not learn anything in school if she were to go. Respondent has attempted imposing consequences, such as grounding and taking away Kamryn's phone, when Kamryn fails to get up in time to catch the bus, but the discipline does not always work. She has not explored medical reasons for Kamryn's difficulties getting up in the morning, explaining she assumed it was a personality issue. Respondent testified that counseling is in place and Kamryn attended the first session, and that respondent's grandmother will be driving Kamryn to school until respondent's license is reinstated. Respondent testified that she will make sure Kamryn

[3] Lisa testified that she learned from respondent that respondent's driver's license was suspended due to multiple speeding tickets and a 2008 DUI.

attends counseling to improve her self-esteem and try to encourage her to make new friends and want to go to school.

¶ 11 Respondent testified that Kamryn does not wish to live with her father. Respondent testified that a change of placement would cause major disruption in Kamryn's life, that there are no concerns about respondent's ability to provide Kamryn with food, shelter, health, or clothing, and there is no risk of physical danger in her home. Kamryn is close to her brother, mother, and grandparents who live nearby, but she has sometimes gone one week without even speaking to her father. Respondent testified that Kamryn does not have a relationship with Imgrund's girlfriend, with whom he lived, and that she did not believe the girlfriend would be a good mother figure. She agreed, however, that Imgrund and his girlfriend have been in a committed relationship for five years and that Kamryn has had exposure to Imgrund's girlfriend, as she normally spends every other weekend with them. Respondent believed that the move to high school, new goals, and counseling would get Kamryn back on track.

¶ 12 Kamryn, age 14 at the time of the hearing, testified that she did not want her placement to change. She is very close to her mom, brother, and grandparents. Her mother tried to get her to go to school, but Kamryn did not like her school and sometimes would get so upset about going that she would not be able to concentrate even if she were to go. Kamryn loves her father and gets along with his girlfriend, but she is closer to respondent and her father sometimes yells. Kamryn likes her new counselor and thinks she will be able to work with her. She agreed that, when she stayed with Imgrund for a few weeks, she went to school every day. Kamryn agreed she has a good relationship with Imgrund and that he has spoken to her about his concerns regarding her school attendance.

¶ 13 The court found that respondent was willing, but unable, to get Kamryn to school and, thus, has been unable to provide Kamryn with educational support. The court found that Imgrund was fit, able, and willing to care for and educate Kamryn. It considered the best interest factors as defined by the Act (705 ILCCS 405/1-3(4.05) (West 2014)), particularly the fact that the statute requires a child's "best interest" to be considered in the context of the child's age and developmental needs. The court noted that Kamryn is a "beautiful young child" who is of "at least of the average intelligence" and "probably more than that." It found that Kamryn's developmental needs were "pretty clear" and that it is in her best interests that she "get to school." The court weighed factors regarding arguable disruption to Kamryn if removed from respondent's home against the evidence that, although Imgrund was "not perfect" and had a prior felony conviction (2007 narcotics charge), Kamryn, when in Imgrund's care, went to school. The court noted that Kamryn was not being pulled from a home to live with strangers, that she has a loving relationship with her father, she has a room in his home, and her relationships with her mother, brother, and grandparents were not being severed. After considering the statutory best interest factors, the court found it in Kamryn's best interests that custody and guardianship over her be placed with Imgrund. The court retained the parties' established joint custody, but "flipped" the arrangement such that Imgrund would become the custodial parent and respondent would exercise non-custodial parenting time as outlined in the parties' joint parenting agreement. The court subsequently denied respondent's petition to stay enforcement of the judgment pending appeal.

¶ 14 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issues of arguable merit. The evidence shows that, despite intervention, respondent failed to ensure Kamryn's school attendance over a three-year

period. In contrast, evidence reflected that Imgrund was willing and able to ensure attendance. The court, in its discretion, determined that although Kamryn did not wish to change her placement, her family ties would not be severed and that it was in her best interest to live with Imgrund. The court weighed the appropriate statutory factors and there is sufficient evidence in the record to support the court's findings; therefore, we agree that there is no justiciable basis for challenging them. We grant counsel's motion to withdraw and affirm the judgment of the circuit court of Kane County.

¶ 15 Affirmed.