2016 IL App (2d) 150960-U
No. 2-15-0960
Order filed January 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LILLIA S., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-585
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Dorata S.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence 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 unfit and it is in the minor's best interests for parental rights to be terminated.

¶ 2 On September 21, 2015, the trial court found that the State had established by clear and convincing evidence that respondent, Dorata S., is an unfit parent to her daughter, Lillia S. (born October 26, 2011), and that it is in the child's best interests that respondent's parental rights be terminated. 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 termination cases). The attorney states that she has read the record and has found no issues of arguable merit. Further, the attorney supports her 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. For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue either that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of respondent's parental rights is not in Lillia's best interests.

¶ 4 A trial court's unfitness and best interest findings will not be disturbed on review unless contrary to the manifest weight of the evidence (*i.e.*, unless the opposite conclusion is clearly evident or the finding is not based on the evidence). See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). Here, the State's petition to terminate parental rights alleged that respondent was unfit on three bases in the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2014)); however, the trial court found respondent unfit on only two: (1) failure to protect Lillia from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2014)); and (2) failure to make reasonable progress toward the return of Lillia to her home during any nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(ii) (West 2014)). For purposes of evaluating whether there exists arguable merit to claims respondent could raise on appeal, we must bear in mind that, even if we were to find persuasive some of respondent's potential arguments attacking the unfitness finding, *any one ground*, properly proved, is sufficient to affirm. *In re Janine M.A.*, 342 Ill. App. 3d at 1049. As such, we agree with counsel that there would be no arguable merit to a challenge to the

court's finding of unfitness because, at a minimum, the court's finding that respondent failed to protect Lillia from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2014)) is not contrary to the manifest weight of the evidence.

¶ 5 Here, the State filed a neglect petition for Lillia on December 19, 2013, alleging that Lillia's environment was injurious in that: (1) respondent had a substance abuse problem that prevented her from properly parenting; and (2) methadone was within Lillia's reach and she ingested it, placing her at risk of harm. 705 ILCS 405/2-3(1)(b) (West 2012). Specifically, evidence at the shelter care hearing reflected that Lillia had been born substance exposed and was taken into care at birth. Respondent received substance abuse treatment and was prescribed methadone.

¶ 6 Lillia, age 2, was returned to respondent in July 2013, and the prior case officially closed in November 2013. Around one month later, on December 19, 2013, respondent left Lillia in another adult's care while she ran an errand. When she returned home around 20 minutes later, it appeared that Lillia had ingested respondent's methadone. Respondent telephoned 911. Lillia was taken to the hospital, administered an antidote, and was released days later. DCFS took protective custody of Lillia due to her prior substance exposure and the fact that she had only recently been returned to respondent's care but, in that short time, accessed and ingested methadone.

¶ 7 It remains unclear how Lillia accessed the methadone. Respondent kept the methadone in a locked box in a cabinet with the key accessible, and she suggested that Lillia climbed up onto the cabinet where the box was kept on a shelf, took down the box, found the key, and opened it. The child was described as a "daredevil" and "hyperactive." A DCFS investigator testified, however, that the police report she reviewed made it "sound" as though the methadone

had been lying around the house. At the time of the hearing, respondent had been in substance abuse treatment and taking methadone for over two years. She had complied with drug drops and treatment. Respondent stipulated that there existed probable cause to believe that Lillia was neglected, but challenged that there existed urgent and immediate necessity that she be taken into care, as well as the efforts of DCFS to make reasonable efforts to prevent Lillia from being taken into care. After hearing evidence, the trial court reiterated that it found probable cause and, further, that it also found both urgent and immediate necessity and reasonable efforts.

¶ 8 Ultimately, on March 5, 2014, respondent stipulated to one count of the neglect petition (that she had a substance abuse problem) and the second count of neglect (the methadone ingestion) was dismissed pursuant to respondent's agreement to complete services. DCFS placed Lillia with her paternal grandmother, with whom she had also been placed during the prior case.

¶ 9 One year later, in April 2015, the State moved to terminate respondent's parental rights. At the hearing, Lillia's certified medical records from her hospitalizations were admitted into evidence. The hearing evidence primarily concerned respondent's efforts and progress, which, while not perfect, were by and large positive. However, on February 3, 2015, one of respondent's drug tests returned positive for heroin. In addition, respondent testified about the December 2013, event, which had returned Lillia to care. She explained that she went to Walgreens and left Lillia with a friend who was supposed to be watching her. Respondent had left Lillia in this adult's care previously without incident. When respondent returned home 20 minutes later, she found that Lillia had accessed the methadone and she immediately called 911. Respondent explained that she kept the methadone in a lockbox with a key. She took the methadone that morning, locked the box, and returned the box to the cabinet. Immediately after

the incident, respondent, on her own volition, obtained a new lockbox, this time with a combination lock, rather than a key. Respondent testified that she had been taking methadone for over four years, and there was no real expectation as to when the methadone treatment would end. Additional questions were asked of respondent concerning the height of the cabinet, whether a ladder or chair was accessible for Lillia to have reached the locked box, Lillia's climbing ability, etc.

¶ 10 As previously mentioned, the trial judge found respondent unfit on two grounds, one of which concerned respondent's failure to protect Lillia from conditions in her environment that were injurious to her. In announcing its findings, the court noted that Lillia was born substance exposed, was hospitalized, and came into care at that time. When the first case ended in November 2013, respondent was in the methadone treatment program. By December 2013, however, the case came back into care when Lillia accessed the methadone. Addressing witness credibility, the court found that the explanation of Lillia climbing up onto the counter, getting down the locked box and key, opening the box, and returning it to its place after ingesting the methadone, was not credible. Further, the court found that, no matter how Lillia had accessed the methadone, the fact remained that she was able to do so, requiring emergency hospital treatment and a multiple day hospital stay. "Somehow, however, the mother failed to properly secure the methadone. That's the only way that this child could have overdosed on it, and, therefore, the court feels strongly that the failure to protect from environment injurious has been proven by clear and convincing evidence." The court further noted that it found "exceedingly important" the fact that respondent had a positive heroin test in 2015, given the long history of this case and the prior case.

¶ 11 Given the foregoing evidence and findings, we agree with counsel that an argument challenging the court's unfitness finding lacks arguable merit. Again, even if we were to disagree with one basis for the court's unfitness finding, we must defer to the trial court and affirm if any *one* ground was proven by clear and convincing evidence. In that regard, any argument challenging unfitness would fail, given the court's finding that respondent failed to protect Lillia from an injurious environment. The evidence reflects that Lillia accessed methadone, ingested it, and was hospitalized for emergency treatment. Prior thereto, Lillia was born exposed to illegal substances. Respondent's methadone treatment program continues, without any anticipated end date and, as such, the substance may remain in her home.

¶ 12 Further, as the law currently stands, the efforts respondent took subsequent to the removal of Lillia from her care are not relevant to the section 1(D)(g) finding. *In re Janine*, 342 Ill. App. 3d at 1050 (reasonable efforts and reasonable progress after the removal "are not affirmative defenses that can be raised by a parent to refute allegations of neglect under one of the other subsections of section 1(D)") (citing *In re D.F.*, 201 Ill. 2d 476, 505 (2002)); see also *In re D.T.*, 338 Ill. App. 3d 133, 145-46 (2003) ("evidence of the parent's conduct after the removal of the child is irrelevant to a section 1(D)(g) unfitness finding"). Moreover, a parent may be found unfit under section 1(D)(g) of the Act for the same conduct that resulted in the initial removal of the child. *In re C.W.*, 199 Ill. 2d 198, 212, 216 (2002) (disagreeing that a court is precluded from finding unfitness based on the conduct that led to the child's removal, and noting "there is no requirement under section 1(D)(g) that a parent be permitted a period of time to correct or improve an injurious environment before he or she may be found unfit on this ground"). See also *In re Janine*, 342 Ill. App. 3d at 1050 (evidence that, prior to their removal, the respondent allowed the children to live in a home with domestic abuse was sufficient to

uphold unfitness finding under section 1(D)(g)); *In re D.T.*, 338 Ill. App. 3d at 145-46 (evidence that, before his removal, the child was beaten by the respondent's boyfriend and the respondent did not immediately seek medical care was sufficient to uphold unfitness finding under section 1(D)(g)) (reversed in part on other grounds, *In re D.T.*, 212 Ill. 2d 347 (2004)).

¶ 13 Given the foregoing, there would be no arguable merit to an argument that the court's finding—that respondent failed to protect Lillia from conditions in her environment that were injurious to her—was not based on the evidence or that the opposite conclusion is clearly apparent. We must agree with counsel that the court's finding here under section 1(D)(g) would render fruitless a challenge to the unfitness finding.

¶ 14 Similarly, we conclude that there is no arguable merit to a claim that it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the child's best interests. See *In re Janira T.*, 368 Ill. App. 3d at 894. In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2014)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*.

¶ 15 Here, the trial court heard evidence that Lillia had spent the vast majority of her life living with her paternal grandmother and adult aunt. The court recognized evidence reflecting that Lillia knows respondent, has a good bond with her, and is loved by her. It found, however, that Lillia also has a good bond with her grandmother and considers home to be with her. Further, Lillia's grandmother is a licensed daycare provider. She is, therefore, cared for by a professional. The daycare has provided Lillia with friends, and her grandmother was able to get

Lillia into school early. Lillia's grandmother has enrolled her in weekly swimming activities and takes her to church. The DCFS caseworker testified that, in her opinion, it would be in Lillia's best interests to stay with and be adopted by her grandmother.

¶ 16 The court further found that: (1) Lillia's bond with her grandmother was stronger than that with respondent because she has lived with her grandmother most of her life; (2) her grandmother cares for Lillia's safety and welfare; (3) Lillia sees herself as being part of her grandmother's family and her life revolves around the two adults in her household; (4) Lillia's cultural development, security, familiarity, and sense of affection have primarily come from her grandmother; (5) her grandmother meets Lillia's needs on a daily basis and is ready, willing, and able to adopt her; and (6) the grandmother's home is where Lillia feels love, affection, and safety. Given the foregoing, we agree with counsel that there would be no arguable merit to a challenge to the court's best interest finding. The court's finding that it is in Lillia's best interests for respondent's parental rights to be terminated so that she could live with and be adopted by her grandmother is not contrary to the manifest weight of the evidence.

¶ 17 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. We grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 18 Affirmed.