2016 IL App (2d) 150967-U
No. 2-15-0967
Order filed February 18, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.R., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 14-JA-100
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Abraham R., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett 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 finding that respondent was shown to be unfit by clear and convincing evidence, its ruling that it was in the best interest of the minor that respondent's parental rights be terminated, or the denial of respondent's motion to continue the unfitness portion of the termination hearing.

¶ 2 On September 9, 2015, the trial court found respondent to be unfit to parent his minor son, A.R. (born March 8, 2014).[1] Subsequently, the court concluded that the termination of respondent's parental rights was in A.R.'s best interest. Respondent then filed a notice of appeal.

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

¶ 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 his opportunity to present additional material to this court within 30 days. The clerk of this court also notified respondent of the motion and informed him that he 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 three principal issues: (1) whether the trial court's finding that respondent is an unfit parent is against the manifest weight of the evidence; (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; and (3) whether the trial court erred in

denying the motion of respondent's attorney to continue the unfitness portion of the termination proceeding due to respondent's absence at the hearing. Counsel discusses the evidence in the record and explains why she believes these issues lack merit. Having reviewed the record, we agree with counsel's assessment as to each of the three potential issues identified. We address each contention in turn.

¶ 5 A. Unfitness

¶ 6 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 grounds is sufficient to uphold a finding of unfitness. *In re 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)).

¶ 7 In its motion to terminate respondent's parental rights, the State set forth three grounds of unfitness: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's 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 minor from him within any nine-

months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) failure to make reasonable progress toward the return of the minor to him within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2014)). The trial court found respondent unfit on all three grounds alleged in the State's motions. In the memorandum of law in support of her motion to withdraw, appellate counsel argues that no meritorious argument could be made with respect to either the first or second grounds alleged in the State's motion.

¶ 8 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 minor's 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.

¶ 9 In this case, the evidence presented at the unfitness portion of the termination proceeding establishes that respondent maintained his supervised visits with A.R. until January 2015, when he moved to Iowa with Alicia R., his wife and A.R.'s mother. After the move, respondent did not stay in contact with the caseworker assigned to the matter. Further, he did not appear at visits scheduled for February, March, or April 2015. Although respondent resumed visitation with A.R. in May 2015, he neither attended any administrative case reviews nor completed an integrated assessment as requested by the caseworker. Respondent's failure to complete the integrated assessment is significant, because, without it, the caseworker was unable to recommend any services for respondent to complete. The record also establishes that respondent did not attend any medical appointments for A.R., he did not inquire about A.R.'s appointments, he did not provide any support, food, or supplies for A.R., and he did not send A.R. any cards, letters, or photographs. As this evidence demonstrates, other than occasional visits with A.R., respondent did nothing to maintain a reasonable degree of interest, concern, or responsibility as to his son. In light of this evidence, we agree that 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 any other ground of unfitness found by the trial court. *B'yata I.*, 2014 IL App (2d) 130558–B, ¶ 30.

¶ 10 B. Best Interests

¶ 11 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 interest of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like the unfitness

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.

¶ 12 In the present case, the evidence considered at the best-interest phase of the termination hearing establishes that A.R. was placed in his current foster home in July 2014, when he was approximately four months old. A.R. has two biological siblings, both of whom reside with him in the same foster home. Respondent's contact with A.R. has been limited to the supervised visits he attended. The record further establishes that the foster parents have provided for A.R.'s daily needs, including food, clothing, and shelter. The foster parents also take A.R. to the doctor when necessary and have kept him up to date on his immunizations. A.R. is bonded to his foster parents and his biological siblings and feels love, a sense of security, and attachment to the foster home. A.R. seeks his foster mother for comfort and interacts with the foster parents without caution. A.R. also interacts with his biological siblings in an appropriate manner and all three minors appear to have a good relationship. The foster parents have agreed to provide permanency for A.R. through adoption. While, respondent undoubtedly feels love for his son, it is not clear that he can provide a safe, stable environment for A.R. At the best-interest hearing, respondent, who is Hispanic, related that his principal concern was that A.R. maintain his cultural heritage. The record establishes, however, that A.R. was only two days old when he was placed in foster care and his subsequent contact with respondent has been limited to the times respondent exercised visitation. Thus, A.R.'s familial ties have been developed primarily with the foster family. Although the foster parents are not of the same cultural background as respondent, they understand A.R.'s background and have indicated a willingness to expose him to his heritage. Given this record, we agree with appellate counsel that a non-frivolous argument

cannot be made that the trial court's finding that it is in the minor's best interest that respondent's parental rights be terminated is against the manifest weight of the evidence.

¶ 13 C. Denial of Motion to Continue

¶ 14 The final potential issue raised by appellate counsel concerns the trial court's denial of respondent's motion to continue the unfitness phase of the termination hearing. Ultimately, however, appellate counsel argues that a non-frivolous argument cannot be made based on this theory. We agree.

¶ 15 On December 10, 2014, the trial court held a permanency-review hearing with respect to A.R. Respondent was present at the hearing. At the conclusion of the December 10 hearing, the court scheduled the next permanency-review hearing for June 1, 2015. Meanwhile, in January 2015, respondent and his wife, Alicia, moved to Iowa. Respondent missed scheduled visits with A.R. in February, March, and April 2015. Although respondent resumed visits with the minor in May 2015, he did not attend the June 1, 2015, hearing. At that time, respondent's attorney noted that he had not been in contact with respondent for "a lengthy period of time." The court then changed the goal from return home to substitute care pending court determination on termination of parental rights. The motion to terminate respondent's parental rights as to A.R. was filed on July 13, 2015. That same day, a hearing was held at which the trial court set August 11, 2015, as the date of the unfitness phase of the termination proceeding. Respondent did not appear at the hearings on July 13 or August 11, 2015. At the August 11 hearing, Janette Grygiel, one of the caseworkers, noted that she had spoken to Alicia on July 28, and confirmed the date of the hearing with her. Grygiel also indicated that she had mailed Alicia a copy of the court order. Respondent's attorney also informed the court that he sent notice of the court date to respondent's last known address, although he did not know if the address was current.

Respondent's attorney then moved to continue the matter so that his client could be present. The trial court denied the motion and the unfitness phase was held that day. Respondent did appear at the next court date on September 9, 2015. At that time, respondent's attorney told the court that respondent informed him that he did not appear at the fitness hearing because "he was not aware of the court date." Counsel asked to reopen proofs with respect to the unfitness portion of the hearing, but the trial court denied the motion.

¶ 16 We review a trial court's decision to grant or deny a continuance using the abuse-of-discretion standard. *In re Tashika F.*, 333 Ill. App. 3d 165, 169 (2002). An abuse of discretion occurs only if no reasonable person could agree with the trial court. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). Moreover, the denial of such a request does not provide a basis for reversal unless the purportedly aggrieved party shows prejudice. *Tashika F.*, 333 Ill. App. 3d 165, 169 (2002).

¶ 17 A parent has a statutory right to be present at the unfitness phase of a termination proceeding (705 ILCS 405/1-5(1) (West 2014)), and his or her absence at such hearings invokes due process concerns (see *In re C.J.*, 272 Ill. App. 3d 461, 464-66 (1995)). Nevertheless, a parent's presence at the unfitness hearing is not mandatory. *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). Hence, a parent's absence does not *per se* invalidate the hearing. In this case, respondent resided in Iowa with his wife, Alicia. The caseworker represented that she spoke with Alicia by telephone on July 28 and confirmed the date of the unfitness hearing with her. The caseworker also indicated that she mailed respondent's wife a copy of the court order setting the unfitness hearing. Respondent's attorney also indicated that he sent notice of the unfitness hearing to respondent's last known address. Respondent's attorney represented at the September 9 hearing that respondent was not aware of the unfitness hearing. However, given respondent's

failure to maintain contact with his attorney and his decision not to attend the June 1 hearing (for which he clearly had notice), a reasonable person could conclude that respondent had received notice of the date of the unfitness hearing, but opted not to exercise his statutory right to attend. A reasonable person could therefore agree with the trial court's decision to deny respondent's attorney's request for a continuance, and respondent could not prevail on an argument to the contrary. Furthermore, it is unclear what additional evidence could have been presented to change the outcome of the case given the considerable evidence in support of the trial court's findings. Thus, respondent cannot establish that he was prejudiced by the denial of the motion to continue.

¶ 18 Appellate counsel also suggests that while respondent's absence at the unfitness hearing raises due process concerns, respondent would not prevail on such an issue. In assessing whether the court's denial of respondent's motion invokes due process concerns, we apply the balancing test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). *Matthews* identifies three factors to consider: (1) the private interest affected by the government's action; (2) the risk of an erroneous deprivation of that interest, keeping in mind any additional safeguards used; and (3) the State's interest, including any additional fiscal and administrative burdens additional procedural protections would entail. *Matthews*, 424 U.S. at 334-35. Applying the first *Matthews* factor, we find that respondent had an interest in raising his child. See *D.T.*, 212 Ill. 2d at 363. Thus, this factor weighs in favor of respondent. However, the second factor weighs against respondent. In this regard, respondent was ably represented by counsel at all stages of these proceedings, and, as noted above, it is unclear what additional evidence could have been presented to change the outcome of the case. See *M.R.*, 316 Ill. App. 3d at 402 ("Although respondent was not present at the termination hearing, in light of the testimony as to respondent's

psychiatric conditions, respondent's attorney likely represented the interest of respondent to the best degree possible."). The third factor also weighs against respondent since "delay imposes a serious cost on the functions of government, as well as an intangible cost to the lives of the children involved." *M.R.*, 316 Ill. App. 3d at 403. Accordingly, based on the record before us, and in light of the applicable law, an argument based on respondent's absence from the fitness hearing in this matter ultimately lacks merit.

¶ 19 III. CONCLUSION

¶ 20 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 his parental rights to the minor.

¶ 21 Affirmed.