2016 IL App (2d) 151169-U
No. 2-15-1169
Order filed March 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re DaShawn M.B., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 07-JA-144
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Shamyatta M.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson 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 November 24, 2015, the trial court found that the State had established by clear and convincing evidence that respondent, Shamyatta M., is an unfit parent to her son, DaShawn M.B. (born September 12, 2001), 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 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. 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 DaShawn'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)): (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to make reasonable progress toward the return of DaShawn to her home during any nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(ii) (West 2014)); and (3) failure to protect the minor from conditions in the environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2014)). The trial court found that the State met its burden on all three counts. On appeal, for purposes of evaluating whether there exists arguable merit to claims respondent could raise, we must bear in mind that *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 make reasonable progress toward the return of DaShawn home to her within a nine-month period following the neglect adjudication is not contrary to the manifest weight of the evidence.

¶ 5 Here, DaShawn was adjudicated neglected in 2007, when his sibling was born cocaine-exposed and, therefore, DaShawn was at risk of harm. In total, there were 15 permanency hearings held throughout the pendency of the case. In 2012, at the ninth hearing, DaShawn had been returned home. However, he was again removed when respondent's paramour punched DaShawn's sibling, resulting in a black eye. Ultimately, the State's March 2015 petition to terminate alleged that respondent failed to make reasonable progress toward the return of DaShawn to her home during five, separate nine-month periods, including between May 15, 2014 and February 15, 2015. Reasonable progress is "an objective judgment and requires demonstrable movement toward the goal of reunification." *In re D.D.*, 309 Ill. App. 3d 581, 589 (2000). The record reflects that, in this period, respondent used illegal drugs, was not engaged in domestic violence counseling, and was discharged from individual counseling due to non-attendance. Her visits with DaShawn remained supervised and occurred only once monthly. As such, there was sufficient evidence for this period alone from which the trial court could reasonably conclude that DaShawn was not demonstrably closer to returning home to respondent. We agree with counsel that there would be no arguable merit to an argument that the court's unfitness finding was not based on the evidence or that the opposite conclusion is clearly apparent.

¶ 6 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 DaShawn's best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). 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*.

¶ 7 Here, the trial court received evidence that DaShawn had been placed with his maternal uncle, who also resided with DaShawn's older brother. The placement was going well, and DaShawn, 14 years old at the time of the hearing, was receiving A's and B's in school. He played on both football and basketball teams, and had a youth mentor. DaShawn seemed to have a "very close" relationship with his uncle, and he had reported to the caseworker that he wished to stay there. "[H]e's so much happier being with his uncle and his older brother, and he would love to be adopted by his uncle." The uncle was willing to provide permanency, whether by adoption or a guardianship, and to maintain contact between DaShawn and his younger siblings, who reside in another home. Respondent did not provide evidence or testimony at the best interest hearing.

¶ 8 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 DaShawn's best interests for respondent's parental rights to be terminated is not contrary to the manifest weight of the evidence.

¶ 9 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.

¶ 10 Affirmed.