2016 IL App (2d) 151289-U
No. 2-15-1289
Order filed May 3, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ENEIDA G., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JA-426
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Lisa I., Respondent-Appellant, and Javier G., Respondent.)	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App 3d 985 (2003), was granted, and the trial court's order terminating respondent's parental rights was affirmed, where an examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Lisa I., to be an unfit parent and determined that it was in the best interest of her minor daughter, Eneida G., to terminate her parental rights.[1]

[1] Respondent's parental rights were also terminated with respect to four of her other children, a decision which we affirmed in a separate appeal. See *In re Jalisa G.*, 2015 IL App (2d) 150934-U.

Respondent appealed, and the trial court appointed counsel on her behalf. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003).

¶ 3 In her motion, counsel states that after "carefully read[ing] the entire record" and researching applicable law, there are no meritorious issues to be raised on appeal. Counsel submitted a memorandum of law outlining proposed issues that she determined lack merit. She further states that she served respondent with a copy of the motion by certified mail at respondent's last known address and informed respondent of her opportunity to present additional material to this court within 30 days. This court also advised respondent that she had 30 days to respond to the motion, which she failed to do. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Rather than provide a detailed recitation of the facts here, we will briefly outline the procedural background and address the relevant facts in the analysis section below.

¶ 6 On December 17, 2012, the State filed neglect petitions with respect to Eneida and her five siblings. Respondent waived her right to a shelter care hearing and consented to temporary guardianship and custody being placed with the Department of Children and Family Services (DCFS). On February 14, 2013, respondent stipulated that her children were neglected based on an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The factual basis for the stipulation was that respondent's paramour struck Eneida or her sibling in the face with a belt. The court adjudicated the children neglected, made them wards of the court, and continued guardianship and custody with DCFS.

¶ 7 The court held four permanency review hearings. At the first hearing on August 13, 2013, the court found that respondent had not made reasonable efforts to correct the conditions that caused Eneida to be removed from her care, but it did not make a finding as to whether respondent made reasonable progress toward correcting those conditions. At the second hearing on November 27, 2013, the court found that respondent had not made reasonable efforts or reasonable progress toward correcting the conditions that caused Eneida's removal. The court held the third hearing on June 3, 2014, and found that respondent had made reasonable efforts, but not reasonable progress toward correcting the conditions that led to Eneida's removal. At the last hearing on December 17, 2014, the court found that respondent had not made reasonable efforts or reasonable progress, and it changed the goal with respect to Eneida and four of her siblings from return home within 12 months to substitute care pending termination of parental rights. The oldest sibling's permanency goal was changed to independence because of her age.

¶ 8 On March 10, 2015, the State filed petitions to terminate respondent's parental rights with respect to Eneida and four of her siblings. Following an unfitness hearing that proceeded on April 9, 2015, and May 7, 2015, the court found that the State proved by clear and convincing evidence that respondent was an unfit parent. Specifically, the court found that respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that caused the children to be in care within nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) make reasonable progress toward the return of the children within three separate nine-month periods after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (4) protect the children from an environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2014)).

¶ 9 The best interest hearing spanned the course of six months. It proceeded on June 10, 2015, with respect to Eneida and her four siblings, and the hearing was continued to August 19, 2015 and subsequently to September 4, 2015. At the September 4, 2015, portion of the hearing, the State moved to continue Eneida's best interest hearing separate from her siblings' hearing due to a change in Eneida's foster placement. Eneida's best interest hearing continued on December 11, 2015, after which the court found that it was in Eneida's best interest that respondent's parental rights be terminated. Accordingly, the court terminated respondent's parental rights with respect to Eneida and granted DCFS the power to consent to adoption. Respondent timely appealed, and appellate counsel was appointed.

¶ 10 II. ANALYSIS

¶ 11 The termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *C.W.*, 199 Ill. 2d at 210. If the trial court finds that a parent is unfit, the matter proceeds to a second hearing at which the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Because the trial court is in the best position to make credibility assessments and weigh the evidence, we will not overturn the findings made by a trial court at a termination hearing unless they are against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶¶ 65, 66. A trial court's decision is against the manifest weight of the evidence only where the opposite result is clearly evident from a review of the record. *Julian K.*, 2012 IL App (1st) 112841, ¶ 66.

¶ 12 A. Unfitness

¶ 13 In her motion to withdraw, counsel maintains that respondent is unable to raise an issue of arguable merit to support an appeal from the trial court's finding of unfitness.

¶ 14 In the petition to terminate parental rights with respect to Eneida, the State alleged, among other things, that respondent was unfit because she failed to make reasonable progress toward the return of Eneida to respondent's care within three separate nine-month periods following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2014). Specifically, the State alleged that respondent failed to make reasonable progress between: (1) February 14, 2013 and November 14, 2013; (2) November 14, 2013 and August 14, 2014; and (3) May 14, 2014 and February 14, 2015.

¶ 15 Reasonable progress toward the return of the minor to the parent is judged by an objective standard. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. It is measured from the conditions that existed at the time custody was taken from the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. The standard for measuring progress is to consider the parent's compliance with service plans and court directives in light of the conditions that led to the minor's removal, as well as subsequent conditions that would prevent the court from returning the minor to the custody of the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Ultimately, reasonable progress exists when the court can conclude that it will be able to order the minor returned to the parent in the near future. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21.

¶ 16 Here, respondent's service plan required her to participate in and complete substance abuse treatment, parenting classes, individual counseling, and domestic violence services. She

was also required to obtain and maintain employment, provide safe and adequate housing, and engage in consistent visitation with her children.

¶ 17 Hannah Feldhaus, the case manager from Children's Home and Aid Society of Illinois (CHASI), testified at the unfitness hearing that respondent attended all the scheduled visits with her children. The visits were chaotic, and respondent had difficulty controlling her emotions as well as interacting appropriately with the children. For instance, respondent would discuss the proceedings with her children, she encouraged her oldest daughter to fight peers, she called her children names, and she yelled at her children. CHASI suspended respondent's visitations a few times due to respondent's behavior. Feldhaus testified, however, that respondent's visitation with the children improved over time, as respondent became more appropriate with her children and the visits became less chaotic. Nevertheless, respondent failed to progress to unsupervised or home visits.

¶ 18 During the pendency of the proceedings, respondent lived in two homes that were condemned. Respondent testified that she ultimately moved into a suitable house in January 2014, but she did not notify CHASI of the move until April 2014 because she "didn't trust [her] caseworker." She also testified that she was not employed or looking for employment but was trying to go to school. Respondent testified that she had been going to a tutor since January 2015 to help her prepare for the GED.

¶ 19 In connection with substance abuse treatment, Feldhaus testified that respondent was required to remain drug and alcohol free. As part of that requirement, respondent was obligated to submit to monthly drug drops. Feldhaus testified about numerous drug drops that respondent failed or did not complete. Respondent entered inpatient substance abuse treatment at Lutheran Social Services of Illinois (LSSI) in August 2013, but she was unsuccessfully discharged for

uncontrollable aggression toward staff members. She reentered inpatient treatment at LSSI in May 2014, which she successfully completed in June 2014. Nevertheless, she had a positive drug drop for cocaine later that month. Respondent was also required to attend four AA/NA meetings a week following inpatient treatment. At the unfitness hearing, respondent testified that she attended the requisite number of meetings for three months, but she then began attending only twice per week. She testified that she stopped attending the meetings four times per week because she "wasn't really comfortable[] being truthful with" herself. On cross-examination and redirect examination, however, respondent testified that she never attended AA/NA meetings four times a week.

¶ 20 Feldhaus further testified that CHASI could not refer respondent to most of the services that she was required to complete, because respondent failed to remain sober for 90 consecutive days. Indeed, the record shows that CHASI made no referrals for services in the first nine months after the adjudication of neglect. CHASI did, however, eventually make referrals for services despite respondent's failure to remain substance free. Respondent began individual counseling at CHASI in January 2014. Feldhaus testified that respondent initially attended counseling, but after respondent's counselor was switched in July 2014, she stopped attending and was unsuccessfully discharged due to nonattendance in August 2014. Respondent testified that she stopped attending individual counseling because her new counselor was "an older, elderly lady that I felt cannot really tell me [*sic*]." Feldhaus testified that respondent never reengaged in counseling after her discharge.

¶ 21 Respondent was also referred to domestic violence services at Clarity Counseling in July 2014. She did not complete the required assessment until CHASI made a second referral two months later. Respondent testified that she attended domestic violence services for two weeks,

but she stopped attending because she "just started not focusing on [herself]" after her son was hospitalized for suicidal ideations. She also testified that she felt it was unnecessary for her to return and complete domestic violence services because she had "not even been in a relationship of domestic violence" for a period of time. Respondent was unsuccessfully discharged from domestic violence services in November 2014 due to nonattendance.

¶ 22 The only service that respondent successfully completed was parenting classes. Originally, respondent received parenting coaching through her individual counselor at CHASI, because she was unable to be referred to a traditional parenting class due to her substance abuse. The record shows that CHASI provided parenting classes because of respondent's "chaotic visits and aggression in visits." After respondent was unsuccessfully discharged from individual counseling, she was referred to traditional parenting classes at La Voz Latina. Respondent testified that she began parenting classes in December 2014, the same month that the permanency goal was changed from return home to substitute care pending termination of parental rights. Respondent successfully completed the parenting class in early 2015.[2]

¶ 23 The foregoing evidence establishes that respondent failed to make reasonable progress toward the return of Eneida during *any* three month period alleged in the State's petition. Respondent failed to complete any services before the permanency goal was changed to substitute care pending termination of parental rights in December 2014. Respondent resisted services and delayed the start of all services. She entered substance abuse treatment in August 2013, but she was unsuccessfully discharged for uncontrollable aggression toward staff.

[2] The record is unclear as to exactly when respondent finished parenting classes, but CHASI's pretrial report stated that it received notice of respondent's completion on March 2, 2015.

Although respondent successfully completed inpatient treatment in June 2014, she failed a drug drop for cocaine two weeks later. Indeed, the record shows that respondent failed to pass a single drug drop during the pendency of the proceedings, despite being required to maintain sobriety. Respondent also failed to attend the requisite number of AA/NA meetings after inpatient treatment, explaining that "it was too much to be real with yourself." Additionally, respondent was unsuccessfully discharged from both individual counseling and domestic violence services for non-attendance in 2014, well over one year after the adjudication of neglect. Moreover, respondent waited nearly two years to begin and successfully complete parenting classes, despite three permanency review hearings in which the trial court found that she had failed to make reasonable progress.

¶ 24 We agree with counsel that there is no issue of arguable merit with respect to the court's finding that respondent is unfit pursuant to section 1(D)(m)(ii) of the Adoption Act. Because evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness, we need not address the remaining grounds of unfitness found by the trial court. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 39.

¶ 25 B. Best Interests

¶ 26 Counsel similarly maintains that respondent is unable to raise an issue of arguable merit to support an appeal from the trial court's finding that it was in Eneida's best interest that respondent's parental rights be terminated.

¶ 27 Once a parent is found unfit, the focus shifts to the child, and 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). The Act sets forth the factors to be considered whenever a best interest determination is required: (1) the physical safety and welfare of the

child; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, which includes the need for stability and continuity of relationships; (8) the uniqueness of every family and child; (9) the risks attendant to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). Also relevant are the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would have upon the child's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 28 The evidence at the best interest hearing showed that Eneida was fourteen years old at the time the hearing began, but she turned fifteen over the course of the six months before the hearing concluded. Eneida had been placed with a traditional foster family since October 2013. The Court Appointed Special Advocate (CASA) testified that the relationship between Eneida and her foster parents was "rocky" at the very beginning due to Eneida's behavior, but they "quickly sorted some things out" and had developed a strong bond. She testified that the foster parents advocated for Eneida to receive extra services through specialized foster care. CASA further testified that the foster parents committed to providing permanency through adoption, and she felt that Eneida would "thrive" with the foster family. She ultimately opined that it was in Eneida's best interest to be adopted by her foster parents, especially because of Eneida's strong relationship with the foster mother.

¶ 29 Courtney Miller, a CHASI specialized caseworker for Eneida, testified that she became Eneida's caseworker on April 23, 2015, after Eneida was hospitalized for suicidal ideations. Eneida was subsequently diagnosed with depression and behavioral issues. While she was

hospitalized, the foster parents strongly advocated for Eneida, visited her, and were a source of support. Miller testified that the foster parents requested a staffing with CHASI to determine whether Eneida needed to be "specialized," which would allow her to be eligible for additional services through CHASI. After Eneida was specialized, the foster parents received additional training to allow them to handle Eneida's mental health and behavioral issues and to remain her foster parents. Miller testified that the foster parents had been willing to adopt Eneida before she was specialized, and they continued to express their willingness to provide permanency for Eneida after she was specialized. Miller further testified that Eneida personally consented to her adoption. Eneida, on her own initiative, drafted permanency commitment forms that she had her foster parents sign.

¶ 30 Between the August 19, 2015, and the September 4, 2015, portions of the best interest hearing, Eneida was temporarily removed from her placement. Thus, on September 4, 2015, the State moved to continue Eneida's hearing separate from her siblings' best interest hearing. When Eneida's best interest hearing resumed on December 11, 2015, Miller testified that Eneida's placement with her foster family was interrupted because of an unfounded hotline report. Specifically, Eneida's foster father was hospitalized because of mental health issues; Eneida had no involvement in her foster father's incident. Eneida was removed from the home as a precaution, and she was placed with the mother of the foster mother (foster grandmother). Miller testified that Eneida had a previous relationship with the foster grandmother, and Eneida thrived while she lived there. Eneida had continuing contact and visitation with her foster parents during that time. Eneida returned to the foster family on November 3, 2015. Miller testified that CHASI had no safety concerns about Eneida's resumed placement with the foster family.

¶ 31 Miller also testified that the foster parents "may or may not be" filing for a divorce. The foster parents discussed this possibility with Eneida, explaining that the foster mother would be the primary caregiver in the event of a divorce, but Eneida would have a continued relationship with her foster father. Miller testified that Eneida "never wavered" in her desire to be adopted by her foster family and "she doesn't want to go anywhere else." Miller ultimately opined that it was in Eneida's best interest that respondent's parental rights be terminated and that she remain with the foster family. Miller explained that Eneida had been placed with her foster family for over two years, she is happy with the foster family, and she is stable.

¶ 32 Also at the December 11, 2015, portion of the best interest hearing, Eneida's foster father made a statement under oath. The foster father stated that he loved Eneida, he considered her to be his daughter, and that he considered himself to be her father. The foster father explained that Eneida called him "dad." He also stated that Eneida gave him a strong sense of purpose and that she was a "big part" of his mental health recovery.

¶ 33 Based on a careful review of the record, we agree with counsel that there is no issue of arguable merit with respect to the trial court's best interest findings. Although the record shows that respondent loves Eneida and her siblings, the evidence as a whole overwhelmingly established that it was in Eneida's best interest to terminate respondent's parental rights. For over two years, the foster family provided food, clothing, medical care, and safety to Eneida. The record shows that Eneida had a strong bond with the entire foster family, but especially with the foster mother. The foster parents strongly advocated for Eneida both before and after she was hospitalized, and they even received training that allowed them to remain Eneida's foster parents after she was specialized. The record also shows that Eneida had been attending the same school since she was placed with her foster family, where she developed a strong group of

friends. The foster parents also facilitated Eneida's relationship with her siblings and respondent. Finally, the foster parents expressed their willingness to adopt Eneida both before and after Eneida was specialized, as well as after they contemplated filing for divorce. Most important, however, Eneida had continuously expressed her desire to be adopted by her foster family, even drafting her own permanency commitment forms. Eneida's strong desire to be adopted persisted even after she was told that her foster parents might file for divorce. Accordingly, the trial court's finding that it was in Eneida's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 34 C. Additional Issue

¶ 35 Counsel raises one additional potential issue in her motion to withdraw, which she maintains lacks arguable merit. Counsel claims that respondent could argue that the trial court improperly relied on evidence concerning respondent's unfitness when it made its best interest findings. Counsel contends that this argument lacks merit because the court could properly consider this evidence in the context of the best interest hearing.

¶ 36 At the September 4, 2015, portion of the best interest hearing, Mark Westphal, the family case worker from CHASI,[3] testified that the putative biological father of Eneida and her siblings, Javier G., showed up unannounced to a birthday party for one of Eneida's siblings.[4] Westphal testified that Eneida and her siblings had not seen him for over two-and-a-half years, and his

[3] Westphal was the case worker for four of Eneida's siblings who are not a part of this appeal.

[4] The father was also a respondent in the termination of parental rights proceedings, but he did not contest the proceedings or otherwise become involved during the pendency of the case.

arrival caused Eneida's siblings to become emotional. Westphal asked Javier to leave, because it had previously been explained to respondent that any visitation between the children and Javier needed to be conducted in a therapeutic environment. Once Westphal asked Javier to leave, respondent screamed at him for about 30 minutes. Westphal testified that respondent's behavior at the party added to the chaotic nature of the situation. Mulvain then testified that respondent orchestrated Javier's appearance at the birthday party.

¶ 37 In ruling on the best interests of Eneida's four siblings in September 2015, the trial court stated that respondent's behavior concerning the incident "does not inure to the minors' best benefit. They should have been prepared to see their father if he was going to show up in that type of situation." We agree with counsel that this issue lacks merit, although for different reasons. The trial court did not claim to consider this evidence when it ruled on Eneida's best interest in December 2015. Nevertheless, even if the trial court considered respondent's behavior and judgment surrounding this incident in determining Eneida's best interest, doing so was proper. See *In re D.L.*, 191 Ill. 2d 1, 12 (2000) (holding that if a respondent is found unfit under section 1(D)(m), "evidence of the parent's conduct occurring more than 12 months after the adjudication of neglect, abuse, or dependency may be introduced at the second stage of the termination proceedings, at which the court must consider the best interests of the minor involved in determining the youth's eventual placement.").

¶ 38 III. CONCLUSION

¶ 39 After examining the record, counsel's motion to withdraw, and counsel's memorandum of law in support of her motion to withdraw, we hold that this appeal presents no issue of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the circuit

court of Winnebago County finding respondent unfit and terminating her parental rights to Eneida.

¶ 40 Affirmed.