2016 IL App (2d) 160013-U
No. 2-16-0013
Order filed June 2, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JAYKOB P. and BROOKLYN E., Minors.	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 14-JA-34 14-JA-35
(The People of the State of Illinois, Petitioner-Appellee, v. Delia H., Respondent-Appellant.)	)	Honorable Francis M. Martinez, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California,* 386 U.S. 738 (1967), was allowed, 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, Delia H., to be an unfit parent and determined that it was in the best interests of her minor children, Jaykob P., born in September 2013, and Brooklyn E., born, in October 2010, to terminate her parental rights. Respondent appealed, and the trial court appointed counsel on her behalf. Counsel moved to withdraw pursuant to *Anders v. California,* 386 U.S. 738 (1967), representing to this court that there are no issues of arguable

merit to support an appeal. Counsel further stated that she advised respondent of her opinion. We informed respondent that she had 30 days to respond to the motion. That time is past, and respondent has not responded. For the following reasons, we allow counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On January 30, 2014, the State filed neglect petitions pertaining to Jaykob P. and Brooklyn E.[1] The State alleged that the minors were neglected in that: (1) they were not receiving the care necessary for their well-being, in that they were residing in a condemned building; and (2) their environment was injurious to their welfare, in that their mother had a substance abuse problem that prevented her from properly parenting. Respondent waived her right to a temporary shelter care hearing, and the trial court transferred temporary guardianship and custody of the minors to the Department of Children and Family Services (DCFS). Respondent agreed to cooperate with DCFS by taking all necessary assessments, following up with any recommendations, and remaining free of all illegal drugs and alcohol.

¶ 5 The trial court conducted an adjudication hearing on April 17, 2014. Respondent testified that her previous home had been condemned due to a crack in a sewer pipe, but that she had moved to a friend's house on January 4, 2013. She acknowledged having smoked "regular marijuana" in the past, but claimed she had not smoked "regular marijuana" since before her children were born. On cross-examination, respondent admitted that she had smoked synthetic marijuana as recently as November 2013.

[1] A third neglect petition was filed pertaining to K.H., an older sibling of Jaykob P. and Brooklyn E. Jaykob P.'s father was also a subject of these proceedings. Neither K.H., nor Jaykob P.'s father are involved in this appeal.

¶ 6 The trial court entered an order of adjudication on May 15, 2014, finding that the State had proved by a preponderance of the evidence that the minors were not receiving the care necessary for their well-being. In so finding, the trial court determined that respondent and the minors had, at some point, been living in a condemned building. Regarding the second count of the State's neglect petitions, the trial court acknowledged respondent's admissions to her prior use of marijuana and synthetic marijuana, but found that the State had not met its burden of proving that respondent's drug use created an environment injurious to their welfare.

¶ 7 A dispositional hearing was held on June 11, 2014. Respondent stipulated that she was unfit or unable to properly care for, train and protect the minors. Guardianship and custody of the minors was placed with DCFS.

¶ 8 The first permanency review was held on December 1, 2014. DCFS caseworker Kayla Evink testified that respondent had not yet completed her integrated assessment. Although respondent had attended an intake appointment, she was asked to leave after she became combative. As a result, respondent was not currently engaged in any services. The trial court found that respondent had not made reasonable efforts, but that the goal of returning home remained intact.

¶ 9 The second permanency review was held on May 4, 2015. Respondent failed to appear. Respondent's court-appointed attorney stated that she had not had any contact with respondent since the first permanency hearing. Caseworker Evink did not know of respondent's whereabouts, but she stated that respondent had been made aware of the court date. The trial court found that the mother had not made reasonable efforts and changed the goal for the minors to substitute care pending termination of parental rights.

¶ 10 The State filed a motion for termination of respondent's parental rights on June 30, 2015. Count I alleged that respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare within any nine-month period after they had been adjudicated neglected; Count II alleged that respondent had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her home within any nine-month period after they had been adjudicated neglected; Count III alleged that respondent had failed to make reasonable progress toward the return of the minors to her within any nine-month period after they had been adjudicated neglected; and Count IV alleged that respondent had failed to protect the minors from an environment injurious to their welfare.

¶ 11 The trial court conducted a hearing on the unfitness portion of the termination proceeding on December 3, 2015. Respondent was not present. Caseworker Evink informed the trial court that she had spoken with respondent the previous day. Respondent's court-appointed attorney requested a continuance, adding that that she had spoken with respondent within the past two weeks, but she was currently unaware of respondent's whereabouts. The trial court denied the continuance, finding that respondent had been given notice of the proceeding and willfully waived her right to attend.

¶ 12 Caseworker Evink testified that respondent never completed her integrated assessment. As a result, DCFS had referred respondent for multiple services in an effort to assess her needs. These included assessments for substance abuse, mental health and domestic violence. Although respondent completed an assessment for mental health, she did not comply with the recommendations that followed. Respondent did not participate in any of the other assessments. Respondent was also referred for individual therapy and parenting classes. She engaged in individual therapy at one point, but was discharged for lack of attendance. Respondent did not

engage in the parenting classes. Although respondent successfully completed some of her required drug tests, she tested positive for synthetic marijuana in January 2015. She also missed several drug tests, which were deemed positive test results. Evink testified that respondent had told her she was addicted to synthetic marijuana and further claimed that she was suffering from withdrawal symptoms. Finally, Evink characterized respondent's visitations with the minors as "sporadic," indicating that respondent missed several appointments and was late arriving for others.

¶ 13 On December 9, 2015, with respondent present, the trial court delivered its decision as to whether respondent was unfit. The trial court found that the State had proved the first three counts of its motion for termination of parental rights by clear and convincing evidence. In so finding, the trial court commented that respondent had failed to comply with any of her services, and her visitation was "sporadic at best."

¶ 14 The trial court proceeded to conduct a hearing on the minors' best interests. Caseworker Evink testified that Brooklyn's father is deceased. Brooklyn was five years old at the time of the proceeding. She had been residing with her paternal grandmother, Tammy Switzer, since January 28, 2014. Turning to Jaykob, Evink explained that his father had been incarcerated for the majority of the proceedings. Jaykob, who was two years old at the time, had been placed in traditional foster care. He had been living with his current foster mother for about eight months, which constituted his longest placement. Evink testified that both minors were being provided with all of their needs and she had no concerns about their health or well-being. Switzer had expressed a willingness to adopt Brooklyn, and Jaykob's foster mother had expressed a willingness to adopt him. Evink believed it was in both of the minors' best interests that parental rights be terminated.

¶ 15 The trial court found that the State had proved by the preponderance of the evidence that it was in the best interests of the minors that respondent's parental rights be terminated. The trial court remarked that respondent had "proffered no evidence" to rebut the State's argument that placement with Switzer was in Brooklyn's best interests, further commenting that respondent had "not taken advantage of services for almost two years." Regarding Jaykob, the trial court noted that he had been in a "welcoming placement" for approximately eight months. During that time, Jaykob's foster mother had been nurturing him and providing security for him, and Jaykob had begun to identify himself as a member of his foster mother's family.

¶ 16 The order terminating respondent's parental rights was entered on December 16, 2015. Respondent filed a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 Counsel identifies three possible issues that could be raised on appeal, whether: (1) the trial court's decision finding respondent unfit was against the manifest weight of the evidence; (2) the trial court's decision to terminate respondent's parental rights was against the minors' best interests; and (3) the trial court abused its discretion in denying trial counsel's motion to continue the termination proceeding. Counsel argues that none of these issues have any arguable merit. For the reasons that follow, we agree.

¶ 19 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 28. First, the State must 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)). 705 ILCS 405/2-29(2) (West 2014). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must

prove by a preponderance of the evidence that it is in the best interest of the minor to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 352, (2004). A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008); *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 20 Here, the trial court found that the State had proved the first three of the four counts in its respective motions for termination of respondent's parental rights by clear and convincing evidence. Count I alleged that respondent had failed to maintain a "reasonable degree of interest, concern or responsibility" as to the minors' welfare. See 750 ILCS 50/1(D)(b) (West 2014). "Since this language is in the disjunctive, any of these three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare." (Emphasis in original.) *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). "Noncompliance with an imposed service plan or irregular visitation with the minor is sufficient for an unfitness finding." *In re A.F.*, 2012 IL App (2d) 111079, ¶ 41.

¶ 21 The record in this case reflects that respondent failed to complete an integrated assessment despite multiple requests from DCFS. Although respondent began to engage in services for mental health and individual therapy, she failed to successfully complete either program. Furthermore, respondent made no efforts to engage in any services for substance abuse or parenting classes. Finally, respondent failed to successfully complete several drug tests, and her visitations with the minors were, at best, "sporadic." Due to respondent's noncompliance with her service plan and her irregular visitation with the minors, we hold that the trial court's

finding regarding Count I of the State's respective motions was consistent with the manifest weight of the evidence. Because we determine that this basis for the trial court's finding of unfitness was proper, we need not address the remaining counts in the State's motion for termination of respondent's parental rights. See *In re J.B.*, 2014 IL App (1st) 140773, ¶ 56. Moreover, we agree with counsel that there is no issue of arguable merit to support an appeal from the trial court's determination that respondent was unfit. Accordingly, we now turn to the trial court's finding regarding the best interests of the minors.

¶ 22 At a best-interest hearing, "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 at 364. The factors to be considered by the trial court in making its best-interest determination include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (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; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preference of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 23 With these factors in mind, we also agree with counsel that there is no issue of arguable merit to support an appeal from the trial court's determination that it was in the minors' best interests to terminate respondent's parental rights. Caseworker Evink testified that Brooklyn was happy and familiar with her surroundings in her placement with Switzer, her paternal grandmother. Switzer had arranged for Brooklyn to attend pre-school and subsequently enrolled her in elementary school. Brooklyn had also been involved in many family events, including a

vacation to Florida. Regarding Jaykob, Evink testified that he had developed an affectionate relationship with his foster mother, who was keeping a photo album with pictures of his biological family members to help maintain those relationships. Evink had gone to the foster mother's home the night before the best-interest hearing, observing that Jaykob had followed directions and looked to his foster mother for care and comfort. In addition, Jaykob's foster mother testified that she had been taking him to daycare while she worked. Their evening routine included chores, dinner with fruits and vegetables, coloring, and reading. She had been saving the financial assistance from DCFS to enroll Jaykob in a private school. Given the level of care that Brooklyn and Jaykob were receiving in their respective placements, we conclude that respondent's parental interests must yield to the minors' interests in a stable, loving homes. See *In re D.T.*, 212 Ill. 2d at 364.

¶ 24 Finally, we agree with appellate counsel that there is no issue of arguable merit regarding the denial of trial counsel's motion to continue the unfitness portion of the termination proceeding. "It is within the juvenile court's discretion whether to grant or deny a continuance motion and the court's decision will not be disturbed absent manifest abuse or palpable injustice." *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002). "Although a parent has a right to be present at a hearing to terminate parental rights, it is not mandatory that he or she be present, and the circuit court is not obligated to wait until he or she chooses to appear." *Id.* at 105. Here, we find no abuse of discretion in the trial court's decision to conduct the unfitness portion of the termination proceeding in respondent's absence, as caseworker Evink and respondent's court-appointed attorney both indicated that they had recently been in contact with respondent regarding the court date.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we hold that this appeal presents no issue of arguable merit. Accordingly, we allow counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 27 Affirmed.