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2016 IL App (4th) 150899-U
NO. 4-15-0899
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 30, 2016
Carla Bender
4th District Appellate
Court, IL

In re: K.F., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 14JA08
TRICIA FRANKLIN,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate counsel's motion to withdraw is granted and the trial court's judgment affirmed where the court's termination of respondent's parental rights is supported by the record and the record reflects no meritorious issues which can be presented for review.

¶ 2 On October 29, 2015, the trial court terminated respondent Tricia Franklin's parental rights to her child, K.F. (born September 15, 2008). Respondent appealed and her appellate counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting no meritorious issues exist for appeal. We grant appellate counsel's motion and affirm the trial court's judgment.

¶ 3 **I. BACKGROUND**

¶ 4 K.F. is the child of respondent and Mitchell W.F. Mitchell's parental rights were also terminated but he is not a party to this appeal.

¶ 5 On April 22, 2014, the State filed a petition for adjudication of wardship, alleging K.F. was a neglected minor. The petition asserted the minor's environment was injurious to his welfare when he lived with respondent, as he was found, on April 20, 2014, blockaded in the basement of his home with a bucket to be used as his toilet. The minor drew the attention of a neighbor by pounding on the window and yelling for help. Police responded and found no adult in the home. Police learned respondent occasionally tied K.F. up when she left him in the basement. Respondent was arrested and booked into the Adams County jail.

¶ 6 On October 9, 2014, the trial court entered its order, adjudicating K.F. a neglected minor and setting the matter for a dispositional hearing. On November 10, 2014, a dispositional report was filed. According to the report, respondent pleaded guilty to unlawful restraint of the minor and was sentenced in December 2014 to two years in prison. She received credit for 241 days of time served. She remained in the Adams County jail. Respondent's visitation with K.F. was suspended during her incarceration, but she was allowed to have written contact with him. Respondent was not participating in services.

¶ 7 On November 18, 2014, the trial court conducted the dispositional hearing. At the conclusion of the hearing, the trial court made K.F. a ward of the court and placed custody and guardianship of the minor with the Illinois Department of Children and Family Services (DCFS).

¶ 8 On October 23, 2015, the State filed a second amended petition to terminate respondent's parental rights to K.F. The petition alleged respondent was unfit because she (1) failed 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) failed to make reasonable progress toward the return of the minor within nine months after the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2012)); (3) substantially neglected the

child continuously or repeatedly (750 ILCS 50/1(D)(d) (West 2014)); (4) exhibited extreme or repeated cruelty to the minor (750 ILCS 50/1(D)(e) (West 2014)); and (5) failed to make reasonable progress toward the return of the minor during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). The State further asserted termination of respondent's parental rights was in K.F.'s best interests.

¶ 9 On October 29, 2015, the trial court conducted a hearing on the State's petition to terminate. Police officer Doug McQuern testified he responded to the call regarding K.F. being locked in the basement. He described the deplorable and unsafe conditions of the home. He interviewed respondent, who told him she sometimes locked K.F. in the basement when either she (1) suffered from an episode of post-traumatic stress disorder as a result of active duty in the military, or (2) had no one else to watch him while she worked.

¶ 10 DCFS employees testified regarding the indicated reports at issue, the condition of respondent's home, and the services recommended to respondent pursuant to her case plans. Respondent had been in jail for the life of the case, from April 21, 2014, through October 20, 2015. She did not complete or participate in any services and was not allowed to visit K.F. The caseworker testified she had made no referrals for respondent. However, respondent began sending K.F. letters in October 2014.

¶ 11 After considering the evidence and arguments of counsel, the trial court found respondent unfit on all grounds alleged. (We note the written order does not indicate all grounds were proved. However, "[w]hen the oral pronouncement of the court and the written order are in conflict, the oral pronouncement of the court controls." *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993).)

¶ 12 The trial court proceeded immediately to a best-interest hearing. K.F. had been participating in therapy with Katharine Sanders. Sanders testified she had visited with K.F. on a weekly basis since October 2014. She described K.F. as "hyper" and said he "really struggle[es] to follow directions [and to] get along with other peers." He reacted negatively to any reminders about his past by "acting out" or becoming very afraid. He would react in a negative manner when he was read a letter from respondent. He would hide behind the couch, cover his face, and turn away. K.F. was placed with his aunt, who has provided for all of his needs and has expressed her willingness to adopt him. They have formed a strong bond and K.F. is very comfortable in her home.

¶ 13 At the conclusion of the hearing, the trial court found termination was in K.F.'s best interests. The same date, October 29, 2015, the court entered an order terminating respondent's parental rights to K.F.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent's appellate counsel filed a motion to withdraw. Counsel has attached a brief in support of that motion and proof of service of the motion upon respondent has been shown. See *In re Austin C.*, 353 Ill. App. 3d 942, 945 (2004) (citing *In re S.M.*, 314 Ill. App. 3d 682, 685-86 (2000), and stating the proper *Anders* procedure in parental-termination cases). "The procedure for appellate counsel to withdraw as outlined in *Anders* applies to findings of parental unfitness and termination of parental rights." *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000). This court gave respondent leave to file additional points and authorities on or before February 8, 2016, but she has not responded.

¶ 17 A. Unfitness

¶ 18 Appellate counsel notes respondent was adjudicated as an unfit parent on five grounds. Counsel claims she could conceivably advance an argument on four of those grounds. Namely, she asserts she could present a meritorious challenge to the sufficiency of the evidence on the following grounds: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor; (2) substantial continuous or repeated neglect of the minor; and (3) extreme or repeated cruelty to the minor. Regarding the fourth ground, respondent's failure to make reasonable progress toward the return of the minor during any nine-month period following the initial nine-month period, counsel contends the State's assertion would fail because this ground was removed from the Adoption Act's definition of "unfit person" in 2014. See Public Act 98-532, § 5 (eff. Jan. 1, 2014).

¶ 19 However, with one alleged ground remaining, counsel insists no meritorious issue can be presented on appeal challenging that allegation of unfitness. That is, counsel contends she is unable to make a colorable argument on behalf of respondent challenging respondent's failure to make reasonable progress toward the return of the minor during any nine-month period following adjudication. We agree that no meritorious issue can be raised with respect to the trial court's unfitness finding on that ground. "Although section 1(D) of the Adoption Act [(750 ILCS 50/1 (West 2014))] sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006).

¶ 20 Parental rights may be involuntarily terminated where the trial court finds that a parent is unfit pursuant to grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) and termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010). The State must prove parental unfitness by clear and convincing evidence. *In re*

Gwynne P., 215 Ill. 2d 340, 354 (2005). On review, the trial court's unfitness determination will not be disturbed "unless it is contrary to the manifest weight of the evidence," and a court's decision is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354.

¶ 21 Pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), a parent may be found unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor." On this ground, our supreme court has found:

"We conclude the language of section 1(D)(m)(iii) is clear and unambiguous with regard to the question at issue. There is no exception for time spent in prison. Indeed, no mention is made of incarceration. The statute simply provides that a ground for a finding of unfitness is the '[f]ailure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor *** or dependent minor." [Citation.] Where the language is clear and unambiguous, courts may not read into it exceptions that the legislature did not express. [Citations.]" *J.L.*, 236 Ill. 2d at 340.

¶ 22 Here, the record shows respondent was incarcerated for the life of the case. She was arrested on April 21, 2014, and taken into custody. She remained incarcerated until October 20, 2015, approximately one week prior to the termination hearing. As a result of her incarceration, she failed to make reasonable progress during the applicable nine-month period.

As of the date of the termination hearing, K.F. could not have been returned to respondent's care, nor could he conceivably be returned to her care in the near future. See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89. Under these circumstances, no meritorious issue can be made on respondent's behalf with regard to this ground of unfitness.

¶ 23

B. Best Interests

¶ 24 On appeal, appellate counsel also argues respondent can raise no meritorious issue for review with respect to the trial court's best-interests finding. She contends the court analyzed each relevant factor based upon evidence adduced at the best-interests hearing and the facts do not demonstrate the court should have reached the opposite result. We also agree that no meritorious issue can be raised with respect to the court's best-interests finding.

¶ 25 Once a parent is found unfit, the matter advances to the best-interests stage of termination proceedings, where "the trial court must give full and serious consideration to the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). The State has the burden of proving that termination is in the child's best interests by a preponderance of the evidence. *Jay. H.*, 395 Ill. App. 3d at 1071. When determining a child's best interests, the court must consider the following factors in the context of the child's age and developmental needs:

- "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2014).

¶ 26 On review, the trial court's best-interests determination will not be reversed "unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071.

"A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071.

¶ 27 Here, evidence at the best-interests hearing showed K.F. had resided in the same foster home, with his aunt, since he was taken into care in April 2014. He was seven years old. He was doing well in the home and his emotional needs were being met. K.F. had developed a strong bond with his aunt and felt safe in her home. His aunt wanted to provide K.F. with permanency through adoption.

¶ 28 Conversely, K.F. had not visited with respondent while the case was pending. When a caseworker would read letters from respondent to him, he reacted in a fearful and negative manner. The evidence failed to indicate any significant relationship existed between the two either before or after K.F. was taken into care. Due to her incarceration, respondent did not complete any services and was in no position to have K.F. placed in her care either at the time of the termination proceedings or at any point in the foreseeable future.

¶ 29 As respondent's appellate counsel points out, the record shows the trial court considered the relevant factors in finding termination was in K.F.'s best interests. The record supports its determination and does not demonstrate that the court should have reached the opposite result. The court's decision was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 32 Affirmed.