

2017 IL App (2d) 170598-U
No. 2-17-0598
Order filed December 15, 2017

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MAURICE O., III.,)	Appeal from the Circuit Court
)	of Winnebago County.
a minor.)	
)	
)	No. 17-JA-50
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee v. Calandra D.,)	Mary Linn Greene,
Respondent-Appellant))	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* Counsel is granted leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967); the judgment is affirmed as no issue of arguable merit could be raised on respondent’s behalf.
- ¶ 2 Respondent, Calandra D., is the mother of nine children. This case, however, concerns only her ninth child, Maurice O., III, (“Maurice”) born in February 2017. Shortly after Maurice’s birth, the State filed a petition alleging he was a neglected child and the court authorized his emergency removal from Calandra’s care. Subsequently, Maurice was placed in the custody of a responsible relative. In July 2017, after a hearing, in which all of the evidence was stipulated, the

trial court adjudicated Maurice neglected, and further found Calandra was dispositionally unfit to care for the minor. Calandra timely appealed, and the court appointed her appellate counsel.

¶ 3 Citing the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), Calandra's appellate counsel now moves to withdraw. *Anders* permits appointed counsel to withdraw from an appeal if the appeal itself is groundless. See also *In re S.M.*, 314 Ill. App. 3d 682 (2000) (applying *Anders* to abuse and neglect cases). In his motion and supporting memorandum of law, counsel states that he has reviewed the record and found no issue of arguable merit that could be raised on Calandra's behalf. Counsel informed Calandra of his opinion, and supplied her with a copy of the motion and memorandum. By letter, the clerk of this court informed Calandra that she had 30 days to respond to counsel's motion if she so chose. That time has passed and Calandra has not responded.

¶ 4 After reviewing the record on appeal, we agree with counsel that no nonfrivolous argument could be raised in this appeal. Pursuant to the Juvenile Court Act, a court's disposition of wardship over a child has two predicate factual determinations. The first includes a finding that a child is "neglected" (705 ILCS 405/2-3(1)(b) (West 2016)); the second includes a finding that the child's parent is presently unfit or unable to care for the child (705 ILCS 405/2-27 (West 2016)).

¶ 5 A parent has a duty to ensure a safe and nurturing shelter for his or her child, and to protect his or her child from an environment that is unsafe and is inimical to their development. See *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). Thus, under the Act, a "neglected child" includes a minor under 18 years of age whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2016). "[T]he terms 'neglect' and 'injurious environment' do not have fixed and measured meanings but, rather, take their content from the

particular circumstances of each case.” *In re Jordyn L.*, 2016 IL App (1st) 150956, ¶ 29. Here, the State’s petition raised a claim of “anticipatory neglect”; that is, it alleged that there was a probability of abuse or harm to the minor because Calandra had “failed to cure the conditions which led to [the] removal of [the] minor’s sibling”—Jasmia O., Calandra’s eighth child. Under a theory of anticipatory neglect, if there is a substantial risk of harm to the child, “the trial court need not wait until the child becomes a victim or is permanently emotionally damaged to remove her—regardless of what has occurred with a sibling.” *Id.* ¶ 35.

¶ 6 The stipulated evidence from the neglect hearing demonstrated that Calandra has a lengthy history as a respondent mother in eight prior juvenile abuse and neglect proceedings, all in Winnebago County. Specifically, prior case reports and service plans indicate that Calandra has been diagnosed with bipolar disorder and post-traumatic stress disorder. She has engaged in several violent romantic relationships, and has issues with substance abuse. Police have been called to her home almost two-dozen times to address acts of domestic violence. According to one report, in 2011, during a domestic violence altercation with a former paramour, Calandra “set fire to the bedroom where 6 of her children were located”; she then “walked out and left the children in the burning home.” Due to noncompliance with court-ordered services, in May 2015, the court terminated Calandra’s parental rights over several of her children.

¶ 7 In June 2015, Calandra gave birth to Jasmia, which generated case No. 15-JA-223. After Jasmia was born, she was immediately taken into protective custody (on the basis of an injurious environment/anticipatory neglect) and made a ward of the court. The court ordered Calandra to cooperate with caseworkers and to participate in services including a mental health assessment, psychological counseling, substance abuse screening and supervised visitation with Jasmia. Records indicate that Calandra did not participate in court-ordered treatment and that her

visitation with Jasmia was sporadic. At some point, Calandra presented as pregnant (*i.e.*, with Maurice) and her caseworker informed her that protective custody would likely be taken over this child as well.

¶ 8 On February 2, 2017, police were summoned to Calandra's home in response to a domestic violence incident between Calandra and her paramour Maurice O., II (Maurice III's biological father). No arrests were made; however, Calandra reported to police that Maurice II was also bipolar, was not taking his medication, "ha[d] been drinking and doing drugs" and "talked about wanting to kill himself." The following day, Maurice II, called the police to report that Calandra had "stolen his car."

¶ 9 On February 24, 2017, Calandra went to her doctor's office in Rockford. The doctor recommended she go to a local hospital to give birth. Instead, Calandra drove to a hospital Kenosha, Wisconsin, where she gave birth to Maurice. Subsequently, hospital workers learned that Calandra was from Rockford, had eight additional children, and that "none of them are in her care." A hospital employee notified DCFS and protective custody was taken of Maurice. Meanwhile, in March 2017, in case No. 15-JA-223, due to Calandra's noncompliance with court-ordered treatment, Jasmia's permanency goal was changed from "return home" to "substitute care" pending a determination of Calandra's parental rights.

¶ 10 After considering the stipulated evidence, the trial court adjudicated Maurice neglected. Specifically, the court noted that Calandra "still has not received services to correct the conditions" that caused Jasmia's removal, and further "has had eight prior children removed [from her care] prior to [the minor]." In a subsequent dispositional hearing in July 2017, the trial court heard evidence that Calandra had begun attending AA meetings and individual counseling, as called for by her service plans. She has also maintained her weekly supervised visitation

appointments with Maurice. Finally, the court noted that Calandra had consistently been present in court for proceedings concerning Maurice. While the court commended Calandra for beginning to engage in services, the court determined that at present she was not fit or able to care for the minor.

¶ 11 In the trial court, the State bears the burden of proving its allegation by a preponderance of the evidence. *In re Tyianna J.*, 2017 IL App (1st) 162306, ¶ 51. But on appeal a trial court's finding of neglect will only be disturbed if it was against the manifest weight of the evidence—*i.e.*, it will be reversed if and only if the opposite result was clearly warranted. *Id.*; *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 6. As noted by appellate counsel, we cannot say that the trial court's adjudication of the minor's neglect, or its dispositional finding, was against the manifest weight of the evidence. There was, simply put, nothing in the record that showed the minor would have a safe, stable home in Calandra's care. Calandra's history of acts of domestic violence, as well as her underlying substance abuse and mental-health issues, are particularly disturbing. We are also troubled by Calandra's attempt to take matters into her own hands by driving to Kenosha to give birth to Maurice in another state, as it was an obvious attempt to obstruct the efforts of child-welfare officers in this jurisdiction. But more importantly, the record shows that Calandra has made minimal progress, over a period of *years* of her involvement with the court system, to address these critical issues. Calandra's failure to address these issues led to Jasmia's removal and a change in her permanency goal. Like the trial court, we need not wait for additional neglect or harm to befall Maurice before removing Calandra as his guardian. See *In re Jordyn L.*, 2016 IL App (1st) 150956, ¶ 32.

¶ 12 In sum, we agree with counsel that no nonfrivolous issue could be raised on Calandra's behalf. The trial court's determination that the minor was neglected and should be a ward of the

court was not against the manifest weight of the evidence. Accordingly, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 13 Affirmed.