2018 IL App (2d) 180030-U
No. 2-18-0030
Order filed April 18, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TANASIA B., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JA-60
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Tamika B., Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: We granted appellate counsel's motion to withdraw and affirmed the trial court's judgment, as there were no issues of arguable merit regarding the trial court's adjudication of the child as neglected and its dispositional order finding that respondent was unfit or unable to parent the child.

¶ 2 Respondent, Tamika B., is the mother of Tanasia B., born February 27, 2007. On June 5, 2017, the trial court adjudicated Tanasia to be a neglected minor. The trial court later held a dispositional hearing and found that respondent was unfit or unable to properly parent Tanasia and that it was in the child's best interest to be made a ward of the court, with custody and guardianship given to the Department of Children and Family Services (DCFS). Respondent

appealed, and the trial court appointed counsel to represent her on appeal. Pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Keller*, 138 Ill. App. 3d 746 (1985), appellate counsel has sought leave to withdraw, arguing that no meritorious issue exists. Appellate counsel has filed a memorandum of law in support of his motion and represents that he has mailed respondent a copy of the motion to withdraw and memorandum. The clerk of this court has also notified respondent of the motion and informed her that she would have 30 days to respond. More than 30 days have passed, and respondent has not submitted a reply to the motion.

¶ 3 Appellate counsel avers that he has thoroughly reviewed the record and is familiar with the case. The potential issues that appellate counsel has raised are: (1) whether the trial court's second adjudication of neglect was against the manifest weight of the evidence; (2) whether the trial court's second dispositional order, finding that respondent was unfit or unable to parent Tanasia and that it was in Tanasia's best interest to be removed from respondent's custody, was against the manifest weight of the evidence. For the reasons that follow, we grant appellate counsel's motion to withdraw and affirm.

¶ 4 I. BACKGROUND

¶ 5 The State initially filed a neglect petition on February 6, 2014. Count 1 alleged that Tanasia was neglected because her environment was injurious to her welfare, in that respondent and her paramour engaged in domestic violence in front of Tanasia. See 705 ILCS 405/2-3(1)(b) (West 2012). Count 2 alleged that Tanasia was neglected because she was not receiving the proper or necessary support, education, or medical care, or not receiving other care including food, clothing, and shelter. See 705 ILCS 405/2-3(1)(a) (West 2012). On August 27, 2014, the trial court adjudicated Tanasia neglected pursuant to respondent's stipulation to count 1. On

November 20, 2014, the trial court entered an order of disposition finding that respondent was unfit or unwilling to parent Tanasia, and that it was in Tanasia's best interest to be made a ward of the court. It gave custody and guardianship of Tanasia to DCFS.

¶ 6 Respondent appealed from the order, which also pertained to three of her other children, and appellate counsel was appointed to represent her. Pursuant to *Anders*, counsel moved to withdraw, and we granted the motion in an order entered on May 18, 2015. *In re Jaylen H., Jeremiah H., Tanasia B., & Jateis L.*, 2015 IL App (2d) 141256-U. In that motion, counsel had raised three potential issues for review, namely: (1) whether the trial court violated respondent's due process by adjudicating the minors neglected as to count 1; (2) whether the adjudication of neglect was against the manifest weight of the evidence; and (3) whether the trial court's finding that respondent was unfit or unwilling to parent the children, and that it was in their best interest to be removed from her custody, was against the manifest weight of the evidence. *Id.* ¶¶ 33, 36, 38.

¶ 7 As relevant here, we stated that the record clearly supported the adjudication of neglect because respondent stipulated to count 1. *Id.* ¶ 37. Additionally, a police officer testified that he responded to a 911 call by one of respondent's children that respondent's husband was hitting and choking her; respondent was at her home with blood coming from her ear and scratch marks on her neck; and respondent's husband was arrested for domestic violence. *Id.* ¶¶ 35, 37. Respondent had also stated that her husband would abuse her in front of her children, and she sought domestic violence counseling. *Id.* ¶ 37.

¶ 8 We further found that it was not against the manifest weight of the evidence for the trial court to find respondent unfit and that it was in the children's best interests to be removed from

her custody, based on her mental health and substance abuse issues. *Id.* ¶¶ 39, 41. We therefore agreed with counsel that the issues lacked arguable merit. *Id.* ¶ 43.

¶ 9 On November 9, 2016, the State filed a petition to terminate respondent's parental rights. However, one day prior, Tanasia's father, Maurice H., contacted DCFS. He reported that he had not sought contact with Tanasia for three years and was told by a relative that she was in foster care. He appeared at a status hearing on November 28, 2016, and was appointed counsel. On January 23, 2017, Maurice filed an amended motion for a permanency review hearing, alleging, among other things, that all orders entered in the case before November 2016 were void because he was not served by summons or publication.

¶ 10 The trial court ultimately agreed as to the August 27, 2014, adjudication order and the November 20, 2014, disposition order, and it vacated these rulings on April 5, 2017. It reasoned that these orders made findings as to the minor, as opposed to each parent, and that it could not vacate the orders as to one parent but not the other.

¶ 11 The trial court held a new adjudicatory hearing on June 5, 2017, based on the original neglect petition. The trial court took judicial notice of the adjudication hearings and orders relating to Tanasia's siblings; respondent's prior stipulation to count 1 of the petition alleging neglect; and its own findings after Tanasia's first adjudication hearing. The trial court then found that the State had met its burden by a preponderance of the evidence as to both counts. Its written order of adjudication stated that it was entered pursuant to respondent's stipulation as to count 1 and a judicial finding as to count 2.

¶ 12 The trial court held a second dispositional hearing on January 2, 2018. Angela Jones testified as followed. She had been the case manager for Tanasia's case since October 2014. Respondent had been encouraged to engage in parenting services, a substance abuse assessment,

substance abuse services, mental health services, individual and family counseling, and domestic violence counseling. She completed parenting services in 2014. She had participated in a substance abuse assessment and completed substance abuse services in 2015. Respondent had consistently been attending supervised visits with Tanasia. She was affectionate and engaged in activities with Tanasia.

¶ 13 Respondent was attending drop-in services for domestic violence, but DCFS felt that she needed more intensive services. Regarding mental health services, Jones had received two hand-written notes in August 2017 stating that respondent was engaging in such services at Solutions Behavioral in Milwaukee. She was reportedly diagnosed with a mood disorder. After receiving the letters, Jones spoke to respondent's therapist. He said that he was going to retire and recommended that respondent obtain a new therapist. He was concerned about a pattern of decreased stability in that respondent kept moving back and forth between Milwaukee and Rockford. The therapist was also concerned about her mental stability and participation in services. Respondent self-reported attending a therapy session in November 2017, but she did not provide a therapist's name, and Jones was not able to verify it. Respondent had not progressed enough in individual counseling to be able to engage in family counseling. Respondent received Social Security disability income due to her mental health, but she denied having any mental health issue. In contrast, DCFS believed that respondent had mental health issues that needed further diagnosis and treatment. Respondent was currently living in Milwaukee.

¶ 14 The trial court found that the State had proven, by a preponderance of the evidence, that respondent was unfit or unable to properly parent at the time. It stated that it "believe[d] there [were] significant mental health issues" and that it did not "really place a lot of weight on a

handwritten letter by a provider from another state that we have very little information about." It stated that respondent probably had reasons for moving to Milwaukee, but when parents moved out-of-state, it was more difficult to monitor them and more difficult for them to engage in services. The trial court found that it was in Tanasia's best interest to be made a ward of the court, and it gave custody and guardianship of Tanasia to DCFS.

¶ 15 II. ANALYSIS

¶ 16 Appellate counsel argues that there is no arguable merit in challenging the trial court's second adjudication of neglect as against the manifest weight of the evidence; we agree. The second adjudication was based on the original neglect petition, and we previously determined that the record "clearly support[ed] the adjudication of neglect." *In re Jaylen H., Jeremiah H., Tanasia B., & Jateis L.*, 2015 IL App (2d) 141256-U, ¶ 37. Regarding count 1, which alleged that respondent and her paramour engaged in domestic violence in front of Tanasia, we stated that, apart from respondent's stipulation to that count, a police officer testified that he responded to a 911 call by one of respondent's children that respondent's husband was hitting and choking her; respondent was at her home with blood coming from her ear and scratch marks on her neck; and respondent's husband was arrested for domestic violence. *Id.* ¶¶ 35, 37.

¶ 17 In the second adjudication, respondent did not explicitly re-stipulate to count 1. However, the trial court orally found that the State had met its burden as to both counts. See *People v. Truesdell*, 2017 IL App (3d) 150383, ¶ 15 (where a court's oral pronouncement and written order conflict, the oral pronouncement controls). As we have already determined that the adjudication of neglect in count 1 was supported by the record apart from respondent's stipulation, it follows that there is no arguable merit in again challenging the neglect finding. We further note that because only a single ground of neglect needs to be proven (*In re Faith B.*, 216

Ill. 2d 1, 14 (2005)), there would also be no arguable merit in challenging the trial court's finding on count 2.

¶ 18 Counsel argues that there is no arguable merit in challenging the trial court's second dispositional order, and we again agree. After an adjudication of neglect or abuse, the trial court must hold a dispositional hearing to determine whether the minor should be made a ward of the court. *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30. The trial court must determine whether the parent is unable, unwilling, or unfit "for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor *** and that the health, safety and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1) (West 2016). The State must prove a parent's "dispositional unfitness" by a preponderance of the evidence, and we will not disturb the trial court's ruling unless its findings of fact are against the manifest weight of the evidence or it abused its discretion by selecting an inappropriate dispositional order. *In re A.T.*, 2015 IL App (3d) 140372, ¶ 13.

¶ 19 Here, the evidence of the dispositional hearing revealed, among other things, that DCFS was concerned about respondent obtaining mental health treatment. Respondent had provided DCFS with only limited information regarding such treatment, and even then respondent's therapist was concerned about respondent's mental stability, her participation in services, and her frequent moves between Milwaukee and Rockford. Further, that therapist was retiring, and respondent did not provide DCFS with verifiable information that she had begun seeing a new therapist. Despite her mental health treatment and the fact that respondent was receiving Social Security disability income due to her mental health, respondent denied having any mental health issues. As the evidence showed that respondent was not acknowledging her mental health

problems, not providing DCFS with sufficient information that she was receiving treatment for her mental health, and her prior therapist reported concerns with her mental health, there would be no arguable merit in challenging the trial court's dispositional order that found that respondent was unfit or unable to parent Tanasia and that it was in Tanasia's best interest to be made a ward of the court.

¶ 20 III. CONCLUSION

¶ 21 After carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Accordingly, we grant appellate counsel's motion to withdraw, and we affirm the judgment of the Winnebago County circuit court.

¶ 22 Affirmed.