2019 IL App (2d) 190528-U
No. 2-19-0528
Order filed September 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re M.S., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-378
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee v. Athena K.,	)	Mary L. Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

ORDER

¶ 1 Held: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), 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, Athena K., to be an unfit parent and determined that it was in the best interests of her minor daughter, M.S., to terminate her parental rights. 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), representing to this court that there is no issue of arguable merit to support an appeal. Counsel further states that he advised respondent of his opinion. Respondent did not file a response to the motion. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On November 1, 2016, the State filed a two-count neglect petition alleging that M.S.'s environment was injurious to her welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2016)) due to (1) respondent's substance abuse problem and (2) a history of domestic violence between respondent and her live-in paramour. Respondent waived her right to a shelter care hearing and stipulated that there was probable cause for neglect. The court found that there was probable cause for neglect and ordered that temporary guardianship be placed with the Department of Children and Family Services (DCFS).

¶ 5 At the shelter care hearing, before the court accepted respondent's stipulation, it entered into evidence the DCFS statement of facts that was signed by Andy Saunders, Child Protection Investigator, and Kassandra Lumsden, Child Protection Supervisor. In it, DCFS stated that it received a report on August 25, 2016, that (1) respondent was passed out in her room with her crying one-year-old child, A.K.,[1] (2) she has been suicidal in the past, (3) she has a son under the guardianship of DCFS, and (4) she has a history of being involved in abusive relationships.

¶ 6 Also on August 25, 2016, DCFS made contact with respondent at her home. She was living in a bedroom of a home that was not hers with two children and two dogs. DCFS requested that she submit to a urine screen. Respondent failed to submit to the urine screen and moved from her residence without notifying DCFS. On October 24, 2016, DCFS again made contact with respondent at her new residence. On this occasion, respondent did complete a urine screen. DCFS received the results on October 27, 2016, which indicated that respondent had

[1] A.K., who is the biological daughter of respondent, was also a subject of the shelter care hearing, in addition to her half-sister, M.S., but her case is not the subject of this appeal.

used heroin within two to three hours of her submitting to the urine screen. Respondent later admitted to the DCFS worker that she was currently and would "always" be a heroin addict. On October 28, 2016, DCFS took protective custody of M.S. and A.K. and placed them with their maternal grandmother.

¶ 7 The statement of facts confirmed that respondent had a current open case with DCFS involving her son, A.P. The statement of facts additionally documented four previous "indicated" incidents by DCFS concerning respondent dating back to 2007. It stated that she had had "numerous" contacts with the police in the last two years for incidents such as domestic violence, panhandling, and violations of orders of protection.

¶ 8 On January 27, 2017, at the adjudication hearing, respondent stipulated to count I of the petition (substance abuse), and the State dismissed count II (domestic violence). The trial court adjudicated M.S. neglected. On February 10, 2017, after respondent agreed with the State as to disposition, the court found that respondent was unable or unwilling to care for M.S. It ordered that M.S. remain in the care of DCFS with the goal of returning M.S. home within one year. It further ordered that respondent remain free of drugs and alcohol, and that respondent comply with services.

¶ 9 On July 25, 2017, after a permanency review hearing, the court found that respondent had made reasonable efforts. It made no finding as to progress. The court maintained the goal of returning M.S. home within one year.

¶ 10 In its service plan dated December 18, 2017, DCFS concluded that respondent had not made reasonable progress, stating:

> "[Respondent] has been participating in the methadone program at Remedies. [Respondent] was just recently discharged from Remedies because they believe she was

using someone else's urine. [Respondent] tested negative for methadone while in the methadone program and getting methadone everyday [*sic*]. Respondent has also tested negative for methadone on DCFS drops. [Respondent] reports that she last used heroin at the end of May. She has not tested positive for heroin. She has tested positive for opiates and reported that she has taken pain pills using old prescriptions for tooth issues."

In the original statement of facts entered into evidence at the shelter care hearing, DCFS noted that 10 hours after heroin use, a person would no longer test positive for heroin, but would test positive for opiates. On December 18, 2017, following the second permanency review hearing, the court found that respondent had not made reasonable efforts or progress. The court maintained the goal of returning M.S. home within one year.

¶ 11 On September 7, 2018, at the third permanency review hearing, DCFS stated that respondent had failed to appear for at least three required drug tests. The court found that respondent had not made reasonable efforts or progress, and it changed the goal to substitute care pending determination of termination of parental rights.

¶ 12 On October 24, 2018, the State filed a four-count petition to terminate respondent's parental rights as to M.S., wherein it alleged that respondent was an unfit person to have a child in that:

"COUNT 1: She has failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. 750 ILCS 50/l(D)(b);

COUNT 2: She failed to protect the minor from conditions within the environment injurious to the child's welfare. 750 ILCS 50/l(D)(g);

COUNT 3: She has failed to make reasonable efforts to correct the conditions that caused the child to be removed during a nine (9) month period after an adjudication of

neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. 750 ILCS 50/l(D)(m)(ii) 7/25/17 to 4/25/18 and/or 12/18/17 to 9/18/18;

COUNT 4: She has failed to make reasonable progress toward the return of the child to her during a nine (9) months period after an adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. 750 ILCS 50/l(D)(m)(ii) 7/25/17 to 4/25/18 and/or 12/18/17 to 9/18/18."

¶ 13 On November 14, 2018, at the unfitness hearing, respondent stipulated to counts III and IV, and the State agreed to dismiss counts I and II. The court accepted the agreement and found respondent to be an unfit person.

¶ 14 On June 5, 2019, the court conducted the best interests hearing. The court took judicial notice of the unfitness hearing and the previous DCFS reports. Charles Ward, the DCFS caseworker assigned to M.S.'s case, testified that respondent had missed seven visits with M.S. between January and March of 2019. He further testified that he had observed M.S. in her foster home, which consisted of Johnathon K., A.K., and M.S. Johnathon K. is the former husband of respondent and the biological father of A.K., who is also the biological daughter of respondent and half-sister of M.S. The DCFS permanency hearing report dated September 5, 2018, indicates that M.S.'s "placement changed when [A.K.'s] father (Johnathon K.) received guardianship and custody of [A.K.]" Johnathon K. testified that DCFS placed M.S. with him in May 2018, at the same time he gained guardianship of A.K. Ward reported that Johnathon K. and M.S. have a "very close relationship" and that M.S. calls him daddy. Ward testified that Johnathon K. has extensive family in the area and that his sister sometimes helps in caring for the children. Johnathon K. was willing and able to adopt M.S. Ward further testified that it was

DCFS's position that respondent's parental rights should be terminated so that M.S. could achieve permanency in her current placement.

¶ 15 DCFS prepared a report for the best interests hearing. The report stated that respondent had "relapsed" in August 2018, and that she also admitted to using heroin in January 2018. Respondent was discharged from the methadone program at Remedies when she was suspected of using another person's urine for drug testing. She was subsequently discharged from Rosecrance for "sporadic" attendance. Following respondent's Rosecrance discharge, she was subsequently discharged from Clarity for "attendance." She had recently married her fifth husband and was not cooperating with court-ordered visitation.

¶ 16 The report also detailed M.S.'s placement with Johnathon K. It noted that M.S. appeared to be happy with Johnathon K. and that she was able to spend a significant amount of time with A.K., from whom she had never been separated. The report stated that Johnathon K. had recently moved into a new home, had a full-time job, had recently switched shifts to enable him to spend more time with M.S. and A.K., and had family helping him to care for the girls as needed. The report also explained a recent indicated incident where Johnathon K. left M.S. in a running vehicle while he took A.K. into a Best Buy to change her diaper. Johnathon accepted responsibility and was referred to a "parenting specialist" to help him make better decisions. The report concluded that it was in the best interests of M.S. that respondent's parental rights be terminated and that M.S. be adopted by Johnathon K.

¶ 17 Respondent's attorney argued that the court should not terminate her parental rights, because to do so would put M.S. and A.K at a "disadvantage." He contended that terminating respondent's parental rights as to M.S. would create a situation whereby respondent would be the "legal" mother of only one of the two half-sisters, though she would still be the biological

mother of both. Since respondent and Johnathon K. would be "co-parenting" as to A.K.,[2] preserving respondent's parental rights as to M.S. would put the girls on the same "footing."

¶ 18 II. ANALYSIS

¶ 19 In his motion to withdraw, counsel submits that there are no non-frivolous issues for appeal.

¶ 20 Involuntary termination of parental rights under the Act 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 2018)). *C.W.*, 199 Ill. 2d at 210. If the parent is unfit, the matter proceeds to a second hearing, at which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, 366 (2004). We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. "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).

¶ 21 Respondent was represented by counsel at all stages of these proceedings. She waived her right to a shelter care hearing and stipulated to the substance abuse charge in the neglect petition. During several review periods, respondent either failed to submit to required drug testing or tested positive for heroin or opiates. At the unfitness hearing, she stipulated that she had not made reasonable efforts (count III) or reasonable progress (count IV) toward the return

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[2] The current status of the DCFS case with respondent concerning A.K. is unclear from the record.

of M.S. After reviewing the evidence, which included evidence that respondent admitted to continued drug use, the court accepted respondent's stipulations and found her unfit. Accordingly, there are no issues raised concerning the trial court's findings that M.S. was neglected or that respondent was unfit.

¶ 22 As noted above, after the court makes a finding of parental unfitness, the matter proceeds to a second hearing where "the focus shifts to the child." *D.T.*, 212 Ill. 2d at 364. Specifically, the court must consider whether it is in the best interests of the child to terminate parental rights. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. At the best interests hearing, the trial court considers:

> "(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 *** (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 2018).

¶ 23 We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 24 The evidence at the best interests hearing showed that M.S. had resided with Johnathon K. since May 2018. Johnathon K. was her foster father and also the biological father to her half-

sister, A.K. The unrefuted testimony was that M.S. was bonded to her foster family, and was well-adjusted to her home.

¶ 25 Ward testified that, following diligent searches, DCFS had been unable to locate M.S.'s biological father. He further testified that respondent missed multiple visits with M.S. in recent months, even though DCFS was providing transportation for those visits.

¶ 26 Ward said that he had observed M.S. at home or at school at least 10 times in the five months leading up to the best interests hearing. During most of those visits, Ward observed M.S. in the care of Johnathon K., and he said they have a loving relationship: "She (M.S.) calls him daddy. They, I do not see a difference between the two sisters and their relationship with [Johnathon K.]. She's very close to him." Ward said that the two girls share a room and that M.S. wanted to show him her room each time he visited. It was clean with age-appropriate bedding and well-stocked with toys. Ward stated that M.S. "is a very smart young lady," and that there were no concerns regarding her development. He opined that it would be damaging to both M.S. and A.K. if they were to be separated. He ended his direct examination by restating DCFS's position that it was recommending that respondent's parental rights be terminated and that Johnathon K. be permitted to adopt M.S.

¶ 27 Johnathon K. testified that if he were allowed to adopt M.S., he would continue to work with respondent to find "reasonable accommodations" through visitation supervision agencies, where respondent could still visit with M.S. and A.K.

¶ 28 The court delivered its findings from the bench. It stated that it had considered the statutory best interests factors as they related to M.S.'s age and developmental stage, and found that the State had met its burden and proven by a preponderance of the evidence that it was in M.S's best interests that respondent's parental rights be terminated.

¶ 29 The trial court's finding that it was in the best interests of M.S. to terminate respondent's parental rights was amply supported by the evidence. M.S. has adjusted well to life with Johnathon K. and she has a close bond with A.K. Accordingly, the determination that it was in M.S.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence, and respondent cannot reasonably argue otherwise.

¶ 30 III. CONCLUSION

¶ 31 After examining the record, counsel's motion to withdraw, and counsel's memorandum of law in support of his motion to withdraw, we conclude 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 M.S.

¶ 32 Affirmed.