2019 IL App (4th) 180567-U

NO. 4-18-0567

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 7, 2019
Carla Bender
4th District Appellate
Court, IL

In re Z.F., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Adams County
Petitioner-Appellee,	)	No. 17JA10
v.	)	
Karen H.,	)	The Honorable
Respondent-Appellant).	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel's motion to withdraw because no meritorious issues could be raised on appeal.

¶ 2 In August 2018, the trial court found respondent mother, Karen H., an unfit parent to her daughter, Z.F. (born May 2015), and found termination of respondent's parental rights would be in the minor's best interests. Respondent appealed the court's judgment terminating her parental rights.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See *In re S.M.*, 314 Ill. App. 3d 682, 685-86, 732 N.E.2d 140, 143 (2000) (holding *Anders* applies to termination of parental rights cases and providing the proper procedure to be followed by appellate counsel). In her brief, appellate counsel contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant

appellate counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Procedural History

¶ 6 In February 2017, the State filed a petition for adjudication of wardship, alleging Z.F. was a neglected or abused minor as defined by the Juvenile Court Act (Act) in that her environment was injurious to her health and welfare. 705 ILCS 405/2-3(1)(b) (West 2016). Following a shelter care hearing, the trial court entered a temporary custody order which found that (1) respondent used illegal substances, (2) respondent was involved in a domestic disturbance in the minor's presence, (3) the minor was malnourished, and (4) the minor missed several doctor appointments.

¶ 7 In July 2017, the trial court conducted an adjudicatory hearing. Respondent was represented by counsel at the hearing but did not personally appear. The court, after considering the evidence presented, found Z.F. was a neglected and abused minor and found as a factual basis the same reasons provided in the temporary custody order.

¶ 8 In August 2017, the trial court conducted a dispositional hearing. Respondent again failed to appear personally, and the trial court found it was in the best interest of Z.F. and the public that Z.F. be made a ward of the court and adjudicated a neglected minor. The court further found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor, and it would be contrary to the minor's health, safety, and best interest to be in her custody. The court placed guardianship and custody with the guardianship administrator of the Department of Children and Family Services (DCFS).

¶ 9 B. The Termination Hearing

¶ 10 In April 2018, the State filed a motion for termination of respondent's parental

rights. The State alleged respondent was an unfit parent because she failed to make reasonable efforts to correct the conditions which were the bases for the removal of Z.F. and respondent failed to make reasonable progress toward the return of the minor within the nine-month period between July 2017 and April 2018. 750 ILCS 50/1(D)(m) (West Supp. 2017). In August 2018, the State filed an amended motion which identified the relevant nine-month period as November 2017 to August 2018.

¶ 11 1. *The Fitness Proceedings*

¶ 12 In August 2018, the trial court conducted a bifurcated termination hearing. During the parental fitness portion of the hearing, the State asked the court to take judicial notice of certain orders in other cases involving respondent's other children, specifically, a 2009 guardianship case, two 2012 neglect cases, and a 2018 neglect case involving a younger sibling. Respondent objected on the grounds that the cases predated the instant matter and did not involve Z.F. The court overruled the objection. The State also requested the court take judicial notice of respondent's absence at the adjudicatory hearing and disposition hearing.

¶ 13 The State then presented the testimony of Sonya Mallory, the DCFS caseworker assigned to the case since its inception. Mallory testified that the initial service plan goals consisted of (1) mental health services (including medication and counseling), (2) substance abuse services, (3) stable housing, and (4) cooperation with DCFS. Respondent's progress on the plan was rated as unsatisfactory in August and November 2017 and in February 2018.

¶ 14 Regarding mental health services, Mallory explained that she referred respondent to counseling services in July 2017. Mallory had a conversation with respondent about her needing to attend mental health services every month during the pendency of the case. However, respondent did not schedule an appointment at the mental health agency until January 2018. Even

then, respondent cancelled multiple appointments, only completed the initial assessment in May 2018, and only ever attended one group therapy session, instead repeatedly missing appointments.

¶ 15 Mallory testified that respondent's progress with substance abuse treatment was similar to that of mental health services. Respondent did complete inpatient treatment in August 2017, but she had been told to schedule such treatment since March 2017 and admitted to using cannabis immediately prior to inpatient treatment. Following completion of inpatient services, respondent was required to complete outpatient treatment, but she stopped attending after just three or four weeks. Mallory reported that respondent missed several drug screenings, failed at least one drug screening, and admitted to Mallory in January 2018 that she was using cannabis to help cope with pain related to her high-risk pregnancy.

¶ 16 Concerning housing, Mallory stated that respondent had lived in six different residences since the case began, including stints with friends and boyfriends, at hotels, and in homeless shelters. Respondent also spent the month of July 2017 out of the state. In October 2017, Mallory was unable to locate or get in touch with respondent because she did not provide updated contact information. In July 2018, one month before the termination hearing, respondent indicated she and her new husband were planning to move, although respondent did not indicate when or to where.

¶ 17 With regard to cooperation with the caseworker, Mallory testified that respondent had gotten very upset with her on several occasions. Mallory gave examples of three phone calls which ended with respondent getting angry and hanging up on Mallory. Additionally, Mallory gave examples of in-person meetings at which respondent became angry and screamed at Mallory before leaving. Mallory stated that, like the mental health services, she repeatedly tried to set

up counseling appointments, parenting classes, and drug treatment for respondent and provided a bus pass to help respondent attend her various appointments.

¶ 18 The trial court found that the State had proved both allegations of unfitness listed in the petition—that is, that respondent failed to make both reasonable efforts and reasonable progress—by clear and convincing evidence. The court explained it was relying on Mallory's testimony, the prior orders in the case, and the service plans and integrated assessment entered into evidence. The court concluded that respondent (1) did not fully engage in services, (2) resided at over five different locations, (3) continued to use cannabis, and (4) was out of contact and unreachable by the caseworker.

¶ 19 2. *The Best Interests Proceedings*

¶ 20 Immediately following the trial court's fitness finding, the court conducted proceedings regarding whether it was in Z.F.'s best interests to terminate respondent's parental rights. The State again presented the testimony of Mallory. Mallory testified that Z.F. had been living with her foster parent for approximately a year and a half. Z.F. was doing well, gaining weight, receiving proper medical care, and had formed a bond with her foster family. Z.F.'s foster parent was committed to adopting Z.F.

¶ 21 The trial court found that it was in Z.F.'s best interests to terminate respondent's parental rights.

¶ 22 C. Respondent's Appeal and the Motion To Withdraw

¶ 23 At the conclusion of the August 2018 termination hearing, respondent indicated she wished to appeal the trial court's judgment. Respondent's trial counsel, Betsy Bier, was appointed to represent her on appeal. In October 2018, appellate counsel filed a motion to withdraw and served a copy on respondent. On its own motion, this court granted respondent until No-

vember 13, 2018, to file a response. Respondent has not filed a response.

¶ 24 II. ANALYSIS

¶ 25 In her brief, appellate counsel contends that appeal of this case presents no potentially meritorious issues for review. We agree, grant appellate counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 26 A. The Applicable Law

¶ 27 "The procedure for appellate counsel to withdraw as outlined in *Anders* applies to findings of parental unfitness and termination of parental rights." *S.M.*, 314 Ill. App. 3d at 685. In *S.M.*, this court set out the four requirements of appellate counsel as follows:

> "[First,] appellate counsel must set out any irregularities in the trial process or other potential errors, which, although in his judgment *are not* a basis for appellate relief, might arguably be meritorious in the judgment of the client, another attorney, or the court. Second, if such issues are identified, counsel must (a) sketch the argument in support of the issues that could conceivably be raised on appeal, and then (b) explain why he believes the arguments are frivolous. *In re Brazelton*, 237 Ill. App.3d 269, 272, 604 N.E.2d 376, 378 (1992). Third, counsel must conclude the case presents no viable grounds for appeal. *In re McQueen*, 145 Ill. App.3d 148, 149, 495 N.E.2d 128, 129 (1986). Fourth, to enable us to properly fulfill our responsibilities under *Anders*, counsel should include transcripts of the relevant hearings, *i.e.*, in termination of parental rights cases, the fitness and best interests hearings." (Emphasis in original.) *Id.*

¶ 28 Appellate counsel fully complied with the requirements set forth in *S.M.*

¶ 29 B. The Trial Court's Fitness Determination

¶ 30 In compliance with *S.M.*, appellate counsel identifies claims that could be made on appeal. Those claims pertain to (1) judicial notice of unrelated cases and (2) the trial court's erroneous finding that respondent had failed to make reasonable efforts.

¶ 31 1. *Judicial Notice of Unrelated Cases*

¶ 32 Counsel first identifies the claim that the trial court abused its discretion when it took judicial notice of cases involving respondent's other children, which occurred before the petition was filed in this case. The supreme court has held that "section 1(D)(m) of the Adoption Act limits the evidence that may be considered under the provision to matters concerning the parent's conduct in the [nine] months following the applicable adjudication of neglect, abuse, or dependency." *In re D.L.*, 191 Ill. 2d 1, 10, 727 N.E.2d 990, 994 (2000). The State's petition in this case relied upon section 1(D)(m) of the Act (750 ILCS 50/1(D)(m) (West Supp. 2017)). Therefore, the trial court arguably acted improperly by taking judicial notice of unrelated cases. However, we conclude that any error in taking judicial notice of unrelated cases was harmless because, as we explain later, the evidence that respondent failed to make reasonable progress is overwhelming. Additionally, we note that nothing in the record indicates that the court relied upon the cases of which it took judicial notice when it found respondent unfit.

¶ 33 2. *Reasonable Efforts*

¶ 34 Counsel next identifies the claim that the trial court's finding that respondent failed to make reasonable efforts to correct the conditions that were the basis for removing the minor was against the manifest weight of the evidence. Whether a parent has made reasonable efforts "is a subjective standard, focusing on the amount of effort that is reasonable for the particular parent whose rights are at stake." *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). However, because an appellate court need not consider the sufficiency of evidence

for other grounds of parental fitness if any one ground is proven by clear and convincing evidence, appellate counsel asserts there are no meritorious arguments on appeal. *In re C.W.*, 199 Ill. 2d 198, 217, 766 N.E.2d 1105, 1117 (2002).

¶ 35

¶ 36 3. *Reasonable Progress*

¶ 37 Counsel explains that the potential claims she identified regarding reasonable efforts lack merit because the trial court's ruling that respondent failed to make reasonable progress toward the return of the child was not against the manifest weight of the evidence. "Reasonable progress is examined under an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17, 83 N.E.3d 485. "Failure to make reasonable progress toward the return of the minor includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care." *Id.*

¶ 38 Counsel contends that this issue renders any potential claim regarding reasonable efforts meritless, and we agree. The State presented extensive evidence that respondent failed to make reasonable progress. Most glaringly, respondent failed to secure stable housing, residing at six different locations during the approximately 18 months the case was pending. Shortly before the hearing, respondent informed Mallory she was planning to move again. Further, respondent admitted to using cannabis repeatedly and failed to attend ongoing drug treatment or counseling. Respondent also failed to engage in mental health services, and even when she did schedule appointments, she did so only after repeated prodding and at the very last minute before review hearings. Finally, respondent did not cooperate with DCFS, frequently ending meetings or phone calls early and failing to provide contact information for the entirety of October 2017. Accord-

ingly, the trial court's finding that respondent failed to make reasonable progress was not only not against the manifest weight of the evidence, but that finding was supported by overwhelming evidence.

¶ 39 C. The Trial Court's Best Interests Determination

¶ 40 Appellate counsel states she reviewed the transcripts for the best interests proceedings and found no irregularities. (We note that appellate counsel was also respondent's counsel before the trial court.) After reviewing the transcripts provided, we likewise conclude no irregularities are present and no arguably meritorious issues may be raised on appeal. We note that respondent did not present evidence concerning the best interests of Z.F., and Mallory testified that Z.F. was thriving in her foster home and that her foster parent hoped to adopt her.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we agree with appellate counsel that no meritorious issue can be raised on appeal. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment. *Anders*, 386 U.S. at 744. We thank appellate counsel for her detailed brief, which this court found very helpful.

¶ 43 Affirmed.