2020 IL App (2d) 190816-U
No. 2-19-0816
Order filed April 28, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re I.N., A.N., and H.N., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 17-JA-398, 17-JA-399, 17-JA-400
	)	
	)	
(People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Davarius N.,	)	Francis M. Martinez,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The order terminating respondent's parental rights is affirmed as the trial court's findings with respect to unfitness and the children's best interests were not against the manifest weight of the evidence. Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) is allowed.

¶ 2 On August 19, 2019, the trial court determined that respondent, Davarius N., is unfit to parent I.N., A.N., and H.N. On that same date, the trial court determined that it was in the children's best interests that respondent's parental rights be terminated. Respondent's appointed counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting that

there are no issues of arguable merit to be raised on respondent's behalf. For the reasons set forth below, we grant counsel's motion and affirm the trial court's findings.

¶ 3 I. BACKGROUND

¶ 4 On December 22, 2017, the State filed a two-count neglect petition alleging that I.N. (born February 19, 2015), A.N. (born May 3, 2014), and H.N. (born May 25, 2013) were neglected minors pursuant to section 2-3(1)(b) of the Juvenile Court Act in that (1) the minors' mother (P.W.) has a substance abuse problem which prevents her from properly parenting the children; and (2) P.W. has mental health issues that prevent her from properly parenting. In the Department of Child and Family Services' (DCFS) statement of facts submitted to the trial court, the reason for involvement was due to the Rockford Police responding to P.W.'s home and discovering her holding a knife and threatening suicide in the kitchen of the home with the children in the living room. She was holding knives to her wrists and stomach while threatening to harm herself. The officers reported that she appeared confused, intoxicated, and smelled of alcohol. P.W. stated that she had suicidal thoughts dating back to a young age. She was taken to Rockford Memorial Hospital for a psychological evaluation. The children were not harmed during this incident.

¶ 5 On January 8, 2018, both respondent and P.W. waived their right to a hearing on whether probable cause existed to believe that the children were neglected. At that time, respondent was in custody at the Winnebago County Jail. The trial court entered a temporary custody order granting DCFS temporary guardianship and custody of the children with discretion to place them with a responsible relative or in traditional foster care. DCFS was given discretion as to respondent's visitation.

¶ 6 On May 23, 2018, the trial court held an adjudication hearing. Respondent informed the court that he had not seen a DCFS caseworker in over a month, nor had he met the newest

caseworker assigned to the minors' case. An integrated assessment of respondent had not yet been performed as of the hearing date. He was still incarcerated at that time. DCFS assured the court that someone would be assigned to respondent's case and perform the assessment. Respondent expressed his desire for visitation with the children, as well as to exchange letters and pictures with them. Respondent was given the foster parents' address to mail all present and future communications. The trial court entered an agreed order dismissing Count 1 and finding the minors neglected as to Count 2 of the State's petition.

¶ 7 On May 24, 2018, a DCFS family service plan was filed with the trial court. The plan indicated that respondent was then incarcerated in the Winnebago County Jail pending an Illinois Department of Corrections (IDOC) transfer for charges of felony possession of a firearm, reckless discharge of a firearm, and damage to property. Respondent suffers from schizophrenia and another unknown mental health diagnosis but was not receiving treatment for either ailment at the time of the plan's filing. Respondent and P.W. have had a history of domestic violence in which respondent was the aggressor. He also has a history of substance abuse and alcohol use. Respondent had not completed any mental health or substance abuse treatments since the opening of the case with DCFS.

¶ 8 The plan recounted the caseworker's experience bringing the children to the Winnebago County Jail for a visit with respondent on February 26, 2018. The visit was said to have gone very poorly as all communication between respondent and the children was conducted through video and a single phone and only one person at a time could hear respondent speaking. H.N. reported that respondent said he was "going to whoop all of our butts when he gets out." The children were acting in an unruly manner throughout the visit to the point that jail staff had to intervene to help to stop their disruptive behavior. The caseworker reported that the bad behavior continued on the

ride home as the children were repeatedly spitting the car. The visits were suspended going forward until respondent was released or until another plan could be determined which wouldn't cause an emotional disruption with the children. The plan required respondent to sign all necessary releases for DCFS, provide certificates of completed services, cooperate with counseling and assessment services.

¶ 9 The trial court held a dispositional hearing on July 16, 2018. Respondent was not delivered to the court date despite a writ of habeus corpus having been filed on July 6, 2018. At this time, respondent was incarcerated at Stateville Correctional Center. Over respondent's attorney's objection, the trial court proceeded to disposition. Respondent was found unable, due to his incarceration, to care for the minors. He was further ordered to cooperate with all DCFS services plans requirements.

¶ 10 Bryan Rilott, the Intact Family Case Manager assigned to the case since May 16, 2018, filed a report with the trial court prior to the dispositional hearing. The report stated that Rilott met with respondent in the Winnebago County Jail, whereupon respondent told Rilott that he wanted to participate in services. Rilott assured respondent that he would stay in contact with him after he was moved to a prison in the IDOC. Respondent was to save any proof for services completed while in prison. He was encouraged to send any pictures or letters for the children to Rilott. Rilott provided his business card to the Winnebago County Jail to give to respondent to ensure where all correspondence was to be sent.

¶ 11 On January 10, 2019, DCFS filed a permanency hearing report prior to a scheduled January 15, 2019, hearing. The report was prepared by Cammarie Mayzes, the family's caseworker since October 24, 2018. Her report indicated that respondent was then incarcerated at Hill Correctional Center for felony possession of a firearm and domestic battery. She had mailed an introduction

letter and integrated assessment to respondent to complete, including the release of information forms. These items were mailed to respondent on November 6, 2018. As of the date of the report, Mayzes had not received any communication from respondent. Despite the lack of a completed integrated assessment, Mayzes made several recommendations for respondent including completion of release of information forms (respondent was provided a pre-stamped envelope), substance abuse services, domestic violence services, and mental health services. The January 10, 2019, service plan rated respondent's progress unsatisfactory for failing to participate in those services.

¶ 12 With respondent present, the trial court held a permanency review hearing on January 15, 2019. Respondent objected to the trial court finding that DCFS had made reasonable efforts toward reunification. Respondent claimed to have never received the packet of information mailed to him in November 2018. He further objected to the date of that mailing as the case had been open since December 2017, and he would only have been able to participate with the required services at the end of the most recent review period after receiving the packet mailed in November 2018. The trial court stated "that wouldn't have been held against [respondent]. I will find [DCFS] has made reasonable efforts in the case overall ***." The trial court withheld findings on the efforts of respondent at that time and continued the permanency review to February 19, 2019.

¶ 13 At the February 19 hearing, the State informed the trial court that respondent had still not provided the caseworker with a completed integrated assessment. He had not been in communication with the caseworker in any way and had not made her aware of the completion of any requisite services. The State sought a finding that respondent had not made reasonable efforts and asked for a change of goal to substitute care pending a determination of the termination of parental rights. The trial court deferred findings on respondent then stated as follows:

> "I can't tell from what I've heard today if [respondent] has been negligent or if there's been issues getting him this information, it doesn't appear to me that it's clear one way or the other, so I'm not going to change the goal today. I'll give [respondent] a chance to do what he needs to do. I'm not going to set the Permanency Review within a couple weeks, I'll set it a few months away and see what [respondent] can do."

After setting a May 14, 2019, hearing date, the trial court went back on the record and was informed by the State that respondent, after a lengthy discussion with the caseworker, indicated that he had received all of the items sent to him but did not complete the forms because he "really didn't understand [them] at first." The trial court then asked respondent whether he had a counselor in the prison to help him fill out the paperwork. Respondent answered that "[b]y the time I was able to really get the documents and look at them, I end up getting into an altercation with one of the [corrections officers]." Additionally, respondent's literacy capabilities were lacking, making completion of the forms a difficult task for him. Respondent told the trial court that he would be reentering the general population in prison following discipline for the altercation with corrections officers and would be able to get the needed information to the caseworker. The caseworker gave respondent additional integrated assessment and consent forms.

¶ 14 On May 8, 2019, DCFS provided the trial court a permanency hearing report ahead of the scheduled May 14 hearing. The report stated that the caseworker had not received any communication from respondent following mailed letters on February 4, 2019, and March 22, 2019. Respondent was provided with a list of services offered at Hill Correctional Center by the caseworker, but has not communicated or verified engagement with any of those services at that time. At the permanency review hearing on May 14, respondent told the court that he had signed up for various services in prison but was subject to a months-long waiting list. He did not bring

anything to the trial court to verify this statement. The State then requested a finding that respondent had not made reasonable efforts or reasonable progress. The State also sought a change of goal to substitute care pending termination of parental rights. The trial court granted both requests.

¶ 15 On June 18, 2019, the State filed a motion for termination of respondent's parental rights and power to consent to adoption. The motion alleged respondent to be unfit for (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare pursuant to 750 ILCS 50/1(D)(b); (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children during any nine-month period (May 12, 2018 to February 12, 2019, and/or August 14, 2018, to May 14, 2019) following the adjudication of neglect pursuant to 750 ILCS 50/1(D)(m)(ii); (3) failure to make reasonable progress toward the return of the children to him within nine months (May 12, 2018 to February 12, 2019, and/or August 14, 2018, to May 14, 2019) after adjudication of neglect pursuant to 750 ILCS 50/1(D)(m)(ii); and (4) depravity pursuant to 750 ILCS 50/1(D)(i).

¶ 16 The trial court held a hearing on the State's petition on July 12, 2019. Cammarie Mayzes, a caseworker with Children's Home and Aid, was called to testify. She had been the family caseworker since November 2018 when she first asked respondent to sign the necessary consent releases. She said that respondent did ultimately return the consents and integrated assessment on May 15, 2019. Respondent was required to complete mental health, substance abuse, and domestic violence assessments. Mayzes was unaware of respondent's completion of any of those requirements.

¶ 17 The State then admitted exhibits 1-4, the family services plans, and exhibits 5-7, certified copies of respondent's criminal convictions, into evidence.

¶ 18 On cross-examination by respondent's attorney, Mayzes agreed that the case had been opened in January 2018, but had no knowledge as to if respondent had been sent consents prior to November 2018, or why he had not. She testified that DCFS had made a critical decision, following the children's lone visit with respondent in jail, that it was in their best interests not to hold visits in the jail environment. Visitation was one of respondent's expectations in the service plan and Mayzes could not recall any additional efforts towards visitation after his transfer to IDOC. After Mayzes's testimony, the trial court continued its decision on unfitness to August 19, 2019.

¶ 19 In finding respondent unfit, the trial court stated that:

> "[Respondent] has been incarcerated since before the adjudication in this matter. He was sent documents, according to testimony of Ms. Mayzes. He was sent documents to complete an integrated assessment in November of 2018, and those documents were not received back until May of 2019. Verification of services *** that are needed to cure the conditions were not provided or those services were not engaged in. That unreasonable delay in communication and no communication with the caseworker demonstrated a lack of interest, concern or responsibility. As a result he did not make reasonable efforts or progress since services were not able to be provided, and he was not able to engage in them or did not engage in them. So Counts 1, 2 and 3 are proven by clear and convincing evidence.
>
> Count 4 is one of depravity. People's [exhibits] 5. 6 and 7 are three felony convictions which one is within five years. The Court will note that two of the convictions are for crimes of violence and one is for a crime of dishonesty. The convictions create a statutory presumption of depravity, and there has been no evidence tendered that rebuts the

> presumption that he may conform to a standard of conduct necessary to not be found depraved. So Count 4 is proven by clear and convincing evidence."

The trial court then proceeded to the best interests portion of the hearing.

¶ 20 Cammarie Mayzes again was called to testify. She testified that H.N. had been placed in a traditional foster home with his biological maternal half-brother, J.W. A.N. was placed in a home with her foster parents, and I.N. was in a home with her foster parents and their two biological children and two other adopted children. The minors had been in their current placements since the late spring of 2018. Each of their foster homes had expressed interest in providing permanency through adoption. Mayzes stated that she had visited the homes and found them to be safe and appropriate. The foster families were meeting the children's food, clothing, and shelter needs. H.N., A.N., and I.N., all suffer from serious mental health diagnoses and were seeing counseling and psychotropic medications. The foster families were making sure that those needs were being met.

¶ 21 The children, according to Mayzes, were bonded to their foster parents. They were included in their foster families' community activities and felt a part of their families. Children's Home and Aid had been facilitating visits between the minor siblings throughout the pendency of the case and the foster parents had expressed openness to continuing those visits after adoption. It was Mayzes's opinion that termination of respondent's parental rights was in the children's best interests.

¶ 22 In its finding on the children's best interests, the trial court stated that:

> "In this particular case, the State has shown by a preponderance of the evidence that it is in the best interest of these children to terminate parental rights. The children are integrated in each of their foster families. The children are engaged in sibling visitation.

> They are not alienated from their siblings. The children present challenges above and beyond typical children given their mental health and physical conditions, and those needs are being met at this time very well by each of the foster placements. At this time [respondent] is [not] in a position to meet those needs, and the prognosis for [respondent] to meet those needs is guarded or dim, at best. *** [Respondent] is present but remains incarcerated for some period of time and will have to engage in services postponing permanency probably for up to a year, which is not in the best interest of any child.
>
> The children are well taken care of, integrated into their foster families, bonded with them. Their heightened needs are being met more than adequately. They are in loving environments."

¶ 23 Respondent filed a timely notice of appeal on September 17, 2019, and appellate counsel, Andrew Vella, was appointed to represent him. On January 23, 2020, this court held oral argument on the cause and shared our concerns with Vella regarding his potential conflict of interest in the record. Vella is employed by the same law firm as David Vella, H.N.'s guardian ad litem in the trial court proceedings. Following oral argument, this court ordered both the State and Vella to provide supplemental briefing on the issue of a potential conflict of interest. While not specifically holding that a conflict of interest existed in this case, Vella's responses to our queries at oral argument and in his supplemental brief to this court served to only heightened our concerns. On February 19, 2019, this court remanded the cause to the trial court for the limited purpose of appointing new appellate counsel for respondent. On February 25, 2020, Thomas E. Laughlin was appointed respondent's appellate counsel and entered his first appearance on the matter. On March 16, 2020, counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). Respondent has not responded to counsel's motion to withdraw.

¶ 24 II. ANALYSIS

¶ 25 Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018), requires this court to issue our decision within 150 days of the filing of the notice of appeal unless there has been "good cause shown." Respondent filed his notice of appeal on September 17, 2019. The 150-day period for this court to issue our decision under Rule 311(a)(5) expired on February 14, 2020. Based on the above sequence of events leading to respondent's second appointed counsel's filing this motion to withdraw pursuant to *Anders*, we find good cause for issuing our decision after the expiration of the 150-day deadline.

¶ 26 Pursuant to the procedures established in *Anders*, appellate counsel has filed a motion for leave to withdraw. Counsel avers that he has reviewed the record in detail but is unable to identify any non-frivolous issues on appeal which would warrant relief by this court. Counsel has submitted a memorandum suggesting potential issues on appeal which may warrant relief by this court. The clerk of this court also notified respondent of the motion and informed him that he would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, and, as stated above, respondent has not presented anything to this court.

¶ 27 Appellate counsel's memorandum argues that the trial court did not err in finding respondent to be an unfit parent or in terminating respondent's parental rights. Counsel discussed the evidence in the record and explained why he believed these issues lack merit. We will review both the unfitness finding and the order terminating respondent's parental rights.

¶ 28 A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of such right is a drastic measure. *In re B'Yata I.*, 2013 IL App 2d 130558, ¶ 28. Accordingly, the Juvenile Court Act of 1987 provides a two-stage process for involuntary termination of parental rights. 705 ILCS 405/2–29(2) (West 2018). Initially, the State must prove

that the parent is unfit. 705 ILCS 405/2–29(2), (4) (West 2018); 750 ILCS 50/1(D) (West 2016); *B'Yata I.*, 2013 IL App 2d 130558, ¶ 28. If the court finds the parent unfit, the State must then show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2–29(2) (West 2016); *B'Yata I.*, 2013 IL App 2d 130558, ¶ 28.

¶ 29 With respect to the first stage of the termination process, section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists various grounds under which a parent may be found unfit. *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2–29(2), (4) (West 2018); *In re Antwan L.*, 368 Ill. App. 3d at 1123. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889–90 (2004). The decision of a trial court with respect to a determination of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 30 Counsel's memorandum argues that the State proved by clear and convincing evidence that respondent was unfit for failure to make reasonable efforts to correct the conditions which were the basis for the removal of the minors (750 ILCS 50/1(D)(m)(i)) and failure to make reasonable progress towards the return of the minors after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii)). The evidence presented at the unfitness hearing and articulated above was sufficient to support the trial court's finding of respondent's unfitness as to both allegations. The State need only prove one statutory factor of unfitness to effectuate the termination of parental

rights. *In re A.S.B.*, 393 Ill. App. 3d 836, 843 (1997). A reviewing court need not consider other findings of unfitness when there is sufficient evidence to satisfy any one statutory ground. *Id*.

¶ 31 A parent may be found unfit for his or her failure "(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor *** or (ii) 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." 750 ILCS 50/1(D)(m)(i)(ii) (West 2018).

¶ 32 Whether a parent has made reasonable efforts to correct the conditions that were the basis for the child's removal is judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 21. Reasonable progress, on the other hand, is an objective standard, which exists when a parent's progress in complying with directives given for the return of the children is sufficiently demonstrable that the court, in the near future, will be able to order the child returned to parental custody. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88. It includes compliance with service plans and court directives considering the conditions that gave rise to the child's removal and other later-known conditions that would prevent the court from returning custody to the parent. *In re C.W.*, 199 Ill. 2d 198, 213-14 (2002).

¶ 33 Reviewing respondent's efforts under a subjective standard, we cannot take issue with the trial court's finding of unfitness. Respondent acknowledged that he had received the necessary documents but failed to do anything with them. He was provided a list of services available at Hill Correctional Center to begin moving towards the goal of reunification with his children upon his release. He did not engage with any of those services. The trial court's finding of respondent's unfitness on this count is not against the manifest weight of the evidence.

¶ 34 An analysis of respondent's progress under an objective standard renders any argument wholly meritless. He has made no progress in complying with the directives given for the return of the children. The trial court could not, in the near future, order the children returned to his parental custody. Respondent's lack of reasonable progress is supported by the record in this case as the record reflects respondent having demonstrated an absence of any progress. The State need only prove one statutory factor of unfitness to effectuate the termination of parental rights. *In re A.S.B.*, 393 Ill. App. 3d 836, 843 (1997). A reviewing court need not consider other findings of unfitness when there is sufficient evidence to satisfy any one statutory ground. *Id*. Having found no error in the trial court's findings of unfitness on either Count 2 or Count 3, we need not reach respondent's remaining unfitness contentions.

¶ 35 Finally, counsel's memorandum argues that the trial court did not err in finding it in the children's best interest to terminate respondent's parental rights. He argues that the minors appear to be in a safe and loving home and are doing well. Counsel points to the trial court's findings of fact as to each of the children, which are supported by the manifest weight of the evidence.

¶ 36 Once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interests. *B'Yata I.*, 2013 IL App 2d 130558, ¶ 41. Section 1–3(4.05) of the Adoption Act (705 ILCS 405/1–3(4.05) (West 2018)) sets forth various factors for the trial court to consider in assessing a child's best interests. *B'Yata I.*, 2013 IL App 2d 130558, ¶ 41. The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *Id*. A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id*.

¶ 37 The trial court took judicial notice of the report submitted by Mayzes which addressed each statutory best interest factor and how they related to each child's situation. She also testified at the best interests hearing. Based on what was presented to the trial court, its decision finding it in the children's best interests to terminate respondent's parental rights is supported by the record. See *supra* ¶¶ 20-22. Given the foregoing evidence, we cannot say that a conclusion opposite to the one reached by the trial court is clearly apparent.

¶ 38 Accordingly, we conclude that the trial court's finding that it was in I.N., A.N., and H.N.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

¶ 40 Our review of the record reveals that any argument that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of his parental rights was not in minors' best interests would be frivolous. Therefore, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 41 Affirmed.