

2014 IL App (2d) 13-1141-U
No. 2-13-1141
Order filed March 18, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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| <i>In re</i> HAILEY E., a Minor |) | Appeal from the Circuit Court |
| |) | of Winnebago County. |
| |) | |
| |) | No. 11-JA-19 |
| |) | |
| (The People of the State of Illinois, Petitioner- Appellee, v. Clifford E., Respondent- Appellant.) |) | Honorable Mary Linn Green, Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Jorgensen 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 judgment terminating respondent's parental rights was affirmed, where a full examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Clifford E., to be an unfit parent and ruled that it was in the best interest of his minor daughter, Hailey E., to terminate his parental rights. Clifford timely appealed, and the trial court appointed counsel. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel moves to withdraw. In his motion, counsel states that he read the record and found no issue of arguable merit. Counsel further states that he advised respondent of his position. Counsel supports his motion with a memorandum of law providing a statement of facts

and an argument why this appeal presents no issue of arguable merit. We advised respondent that he had 30 days to respond to the motion. That time is past, and he has not responded. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment.

¶ 3

I. BACKGROUND

¶ 4 Clifford is the biological father of Hailey, born January 15, 2011. Hailey's mother is Nicole D. Prior to Hailey's birth, the Illinois Department of Children and Family Services (DCFS) removed two children from Nicole's care, and one child from Clifford's care. When Nicole presented to the hospital to give birth to Hailey, she tested positive for opiates. On January 19, 2011, the State filed a neglect petition with respect to Hailey. Clifford and Nicole each waived the right to a shelter care hearing, and the trial court granted temporary guardianship and custody to DCFS. On March 25, 2011, the court adjudicated Hailey a neglected minor. At the dispositional hearing on June 1, 2011, Clifford and Nicole stipulated to placing guardianship and custody of Hailey with DCFS, with the discretion to place Hailey in foster care or with a responsible relative.

¶ 5 At the first permanency review hearing on November 29, 2011, caseworker Megan Grooms-Alberto of Children's Home and Aid testified that Hailey was in foster care with her two older brothers. She testified that Clifford had weekly one-hour visits with Hailey but that he was not consistent in his attendance. Grooms-Alberto testified that Clifford missed all four visits in July and missed half of the visits in August and September. In June, October, and November, he attended all visits. According to Grooms-Alberto, Clifford had been very difficult to contact. Clifford was participating in parenting classes and underwent a domestic violence assessment with a provider in the Freeport area. Grooms-Alberto testified that the provider Clifford chose was not an approved provider, and Children's Home and Aid was attempting to work with the

provider so that it could obtain approval. The trial court found that it was in Hailey's best interest to maintain the permanency goal at return home within 12 months. The court declined to make findings concerning Clifford's efforts or progress until the status of his provider was "ironed out."

¶ 6 The second permanency review was held on March 20, 2012. Caseworker Michelle Garnhart of Children's Home and Aid testified that she was assigned to Hailey's case. She testified that Clifford was "pretty consistent" with his weekly supervised visits. She further testified that he had completed all requested drug screens. A drug screen completed on January 24, 2012, tested positive for benzodiazepines, but Clifford had a prescription for Clonazepam, which caused the positive result. The other screens were negative. Garnhart testified that Clifford continued to attend counseling at the provider in Freeport, but, according to Garnhart, the provider did not have a "domestic violence certification," which was necessary for the counselor to become an approved provider. Garnhart testified that Clifford completed a 12-week parenting class. According to Garnhart, Clifford still needed to complete a domestic violence assessment and a protective parenting assessment. The trial court found that it was in Hailey's best interest to maintain the permanency goal at return home within 12 months. The court further found that Clifford made reasonable efforts and reasonable progress.

¶ 7 The third permanency review was scheduled for June 5, 2012. Clifford appeared, but his counsel did not. The court continued the hearing to June 25, 2012. On that date, Clifford's counsel appeared and informed the court that Clifford would not be attending the hearing due to car trouble. The court continued the hearing to July 17, 2012.

¶ 8 Clifford again failed to appear for the July 17, 2012, permanency review hearing, which the court conducted in his absence. Garnhart testified that Hailey remained in the same foster

care placement she had been in since birth. Regarding Clifford, Garnhart testified that she had not heard from him since the June 5, 2012, court date. She testified that the phone number she had for Clifford was disconnected as of July 5, 2012. According to Garnhart, following the March 20, 2012, hearing, three of Clifford's drug screens tested positive for benzodiazepines, which was attributable to his prescription medication; one drug screen was not tested because it did not have a tamper-evident seal; one drug screen was negative; and two drug screens were not completed. Garnhart testified that, on April 13, 2012, Clifford was arrested for domestic battery of Nicole. Garnhart further testified that, during this review period, she learned that police responded to a domestic dispute between Clifford and Nicole in February 2012; however, neither parent was arrested. Garnhart testified that Clifford had a domestic violence assessment scheduled at the end of June with Clarity Counseling, which was an approved provider, but did not attend. Garnhart testified that Clifford "typically" attended visits with Hailey but had missed two in a row. The trial court found that Clifford did not make reasonable efforts or progress but maintained the permanency goal at return home within 12 months.

¶ 9 The fourth permanency review hearing took place on January 28, 2013. Garnhart testified that Clifford failed to complete one drug screen in July, three drug screens in October, and two drug screens in November. Drug screens in July and September again tested positive for benzodiazepines, as well as for low creatine levels. One drug screen in August was negative. Garnhart further testified that Clifford had not visited with Hailey since September 2012. According to Garnhart, there were additional domestic disputes between Clifford and Nicole. In her report, Garnhart indicated that police were called to Clifford's apartment on August 9, 2012, due to a dispute between Clifford and Nicole, but no arrests were made. Garnhart's report indicated that police were called to Clifford's apartment again on December 2, 2012, but no

arrests were made. Garnhart testified that, because a missed drug screen is treated as a positive test result, Clifford had not maintained three months of sobriety, and she was unable to refer him to services, including domestic violence counseling and partner abuse education. The trial court found that Clifford did not make reasonable efforts or progress. The court further found that it was in Hailey's best interest that the permanency goal be changed to substitute care pending termination of parental rights.

¶ 10 On March 25, 2013, the State filed a petition to terminate Clifford's parental rights. The petition alleged that he was an unfit parent in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to Hailey's welfare (count I) (750 ILCS 50/1(D)(b) (West 2012)); he failed to make reasonable efforts to correct the conditions that were the basis for the removal of Hailey from his care within nine months following an adjudication of neglect (count II) (750 ILCS 50/1(D)(m)(i) (West 2012)); he failed to make reasonable progress toward the return of Hailey to him within nine months following an adjudication of neglect (count III) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and he failed to make reasonable progress toward the return of Hailey to him within any nine-month period after the end of the initial nine-month period following an adjudication of neglect (count IV) (750 ILCS 50/1(D)(m)(iii) (West 2012)). Count IV alleged that Clifford failed to make reasonable progress either from March 1 to December 1, 2012, or from July 25, 2012, to April 25, 2013.

¶ 11 At the fitness hearing, which took place over two days on May 24 and August 29, 2013, Garnhart testified that she was assigned as the caseworker for Hailey's case in December 2011. According to Garnhart, prior to September 2012, Clifford attended most of his weekly supervised visits with Hailey; however, following September 4, 2012, Clifford had not visited with Hailey. Garnhart explained that Clifford called her in September 2012 to tell her he was in

a car accident and that he would miss the next visit because he lacked transportation. Garnhart encouraged Clifford to find alternative transportation and informed him that, pursuant to the policy of Children's Home and Aid, visitations would no longer be scheduled if he missed three consecutive visits. Garnhart testified that she did not hear from Clifford again until April 26, 2013, when he requested that visitation be reestablished. Garnhart testified that Clifford's request was denied. According to Garnhart, Children's Home and Aid determined that visitation was no longer in Hailey's best interest, because Clifford had gone so long without visiting Hailey, and because the case already was scheduled to go to trial on termination of parental rights. Garnhart further testified that Clifford never attended Hailey's medical appointments and never specifically inquired about Hailey's therapy or medical care.

¶ 12 Regarding Clifford's compliance with the service plan, Garnhart testified that the same service plan was in effect from December 2011 to April 2013. According to Garnhart, Clifford failed to consistently complete required drug screens and, after September 2012, completed no drug screens. Garnhart further testified that Clifford failed to complete a required domestic violence assessment. Garnhart testified that it was difficult to contact Clifford and that she did not speak with him from mid-September 2012 until April 26, 2013. According to Garnhart, even before September 2012, Clifford did not progress toward unsupervised visits with Hailey because Children's Home and Aid received police reports of domestic disputes between Clifford and Nicole in February, April, August, and December 2012. Garnhart testified that the April 2012 incident resulted in Clifford's arrest for domestic battery. Garnhart further testified that, in May 2012, she asked Clifford about the incident, and he denied even having contact with Nicole. According to Garnhart, Clifford also was arrested for aggravated DUI in March 2013.

¶ 13 On cross-examination by Hailey's attorney, Garnhart testified that, to her knowledge, Clifford had not provided any clothing, financial support, or gifts to Hailey. She further testified that Clifford missed at least two quarterly child and family team meetings and had not attended any administrative case reviews, which were held every six months.

¶ 14 On cross-examination by Clifford's attorney, Garnhart testified that Clifford completed parenting classes in December 2011. She further testified that Clifford lived in Dakota, Illinois, which was approximately 45 minutes from Rockford. Garnhart testified that Clifford informed her in September 2012 that he did not have transportation to come to Rockford for visits because he had been in a car accident. Garnhart also testified that Clifford began attending domestic violence counseling with a provider in Freeport in August 2011 but that the provider did not have the required domestic violence counseling credentials to be approved by DCFS. Garnhart testified that the domestic battery charge against Clifford arising out of his April 2012 arrest was dismissed.

¶ 15 The court found that the State proved by clear and convincing evidence all four grounds of unfitness alleged in its petition to terminate parental rights. The court based its finding on, among other considerations, the fact that Clifford had not visited Hailey since September 2012, that he had not completed requested drug screens, that he had not been cooperative with the caseworker, and that, other than completing a parenting class in 2011 and undergoing a domestic violence assessment with an unapproved provider, he had not engaged in any required services. The court moved to a best interest hearing, which it held on October 9, 2013.

¶ 16 At the best interest hearing, Garnhart testified that Hailey was in foster care with her two older brothers, whom the foster parents had adopted. The foster parents, who began caring for Hailey when she was two days old, were willing to adopt her. According to Garnhart, Hailey

attended speech therapy, occupational therapy, and developmental therapy. The foster parents ensured that Hailey attended all therapy and medical appointments. Garnhart testified that Hailey was diagnosed with a sensory processing disorder after the foster mother noticed developmental delays. According to Garnhart, Hailey was comfortable in her foster home and had good relationships with her foster parents and siblings. Garnhart testified that, based on her observations of supervised visits, Hailey was not as attached to her biological parents as she was to her foster mother. Garnhart's opinion based on her education and her 12 years of experience as a caseworker was that it would be very difficult for Hailey if she were removed from her foster home, which was the only home she had known.

¶ 17 On cross-examination by Clifford's attorney, Garnhart testified that Clifford would play with Hailey during the visits she observed. She further testified that there was no indication that Hailey was scared of Clifford. According to Garnhart, she did not know where Clifford currently was living, because he refused to share that information with her. Garnhart visited Clifford's one-bedroom apartment in March 2012 and found it to be appropriate. Garnhart testified that she believed Clifford had moved, but she did not know where he moved.

¶ 18 Clifford testified that his interaction with Hailey at visits "was great." He testified that they played games together, he tried to teach her how to share toys, and he brought food to share with her. Clifford said he employed techniques he learned in his parenting classes. According to Clifford, Hailey would hug him when he arrived and kiss him when he left, and she had begun calling him "dada." Clifford felt that he had a bond with Hailey. Clifford testified that when visitations stopped, it was not by choice. Clifford testified that he was unable to attend visits because the "whole front right side" of his vehicle "was totaled," and he lived approximately one hour and fifteen minutes away from Rockford. Clifford testified that his license currently was

suspended for an unpaid ticket. Clifford testified that he did not know that Hailey attended therapy, and when asked how much he knew of Hailey's "medical indications," Clifford said, "Nothing." According to Clifford, he was interested in knowing the information, but no one had told him about it.

¶ 19 On cross-examination by the assistant State's Attorney, when asked when his car was totaled, Clifford testified, "It was I think around fall." Clifford testified that he fixed the vehicle himself, and it took him "about five weeks give or take." Clifford admitted that he was arrested for DUI in March 2013. Clifford testified that he had moved to Rockford and that Garnhart never asked him for his new address. When asked if he was aware that the dispositional order required him to notify the caseworker of any change of address, Clifford testified that he "was not aware of that." Clifford agreed that the last time he visited Hailey was in September 2012. Clifford also testified that, before he moved into his current apartment in Rockford, he did not have a residence for a period of time and was staying at a friend's house part of the time and at his office the remainder of the time.

¶ 20 On cross-examination by Hailey's attorney, Clifford admitted that he had pending charges in federal court.¹ He did not know if he faced possible incarceration.

¶ 21 The court found that the State proved by a preponderance of the evidence that, taking into account all of the statutory best interest factors, it was in Hailey's best interest to terminate Clifford's parental rights. Clifford timely appealed.

¹ Attached to Garnhart's report dated August 29, 2013, was a federal indictment charging Clifford with 20 counts of mail fraud in connection with his operation of two charitable organizations called "Helping Out, LLC" and "Smiles for Kids Foundation." The indictment alleged that he defrauded victims out of more than \$120,000.

¶ 22

II. ANALYSIS

¶ 23 Termination of parental rights under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The State first must establish by clear and convincing evidence one ground of parental unfitness from those listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). If the trial court finds a parent unfit, the court must conduct a second hearing to determine, by a preponderance of the evidence, whether it is in the best interest of the minor to terminate parental rights. *B.B.*, 386 Ill. App. 3d at 698. A reviewing court will not disturb a trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on evidence. *B.B.*, 386 Ill. App. 3d at 697-98.

¶ 24 We agree with counsel that there is no issue with arguable merit to support an appeal from the trial court's finding of unfitness. The court found that the State proved by clear and convincing evidence all four grounds of unfitness alleged in its petition to terminate parental rights. A single ground of unfitness under section 1(D) is sufficient to support a finding of unfitness. *Julian K.*, 2012 IL App (1st) 112841, ¶ 2.

¶ 25 Based on the evidence presented at the unfitness hearing, the trial court's finding that the State proved count IV of the petition by clear and convincing evidence was not against the manifest weight of the evidence. Count IV alleged that Clifford failed to make reasonable progress toward the return of Hailey to him within any nine-month period after the end of the initial nine-month period following an adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West

2012)). The phrase “any nine-month period” in subsection 1(D)(m)(iii) means that unfitness “may be examined in light of any nine-month period following the expiration of the first nine months after the adjudication of neglect.” *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). The trial court adjudicated Hailey a neglected minor on March 25, 2011, which meant that the initial nine-month period ended on December 25, 2011. Count IV alleged that the nine-month period during which Clifford failed to make reasonable progress was either March 1 to December 1, 2012, or July 25, 2012, to April 25, 2013.

¶ 26 The evidence at the unfitness hearing was that Clifford stopped visiting with Hailey in September 2012 because he lacked transportation. Sometime in mid-September, Garnhart informed Clifford that he needed to obtain alternate transportation and that visits would no longer be scheduled if he missed three consecutive visits. Garnhart testified that she did not hear from Clifford again until April 26, 2013, when he requested that visitation be reestablished. By then, nearly eight months had passed since Clifford’s last visit with Hailey. The evidence also revealed that, beginning in July 2012, Clifford routinely failed to complete required drug screens, and he stopped completing them altogether in September 2012. Clifford also failed to complete a domestic violence assessment with an approved provider, even though Garnhart scheduled an assessment in June 2012 with Clarity Counseling, an approved provider. Clifford also never completed a protective parenting assessment as the service plan required. Furthermore, Children’s Home and Aid received police reports of domestic disputes between Clifford and Nicole in February, April, August, and December 2012, and Clifford was arrested for aggravated DUI in March 2013. The evidence clearly established that Clifford failed to make reasonable progress toward Hailey’s return to him from July 25, 2012, to April 25, 2013. Because the court’s finding that the State proved count IV by clear and convincing evidence was not against

the manifest weight of the evidence, counsel is correct that there is no issue of arguable merit to support an appeal from the unfitness finding.

¶ 27 We also agree with counsel that there is no issue of arguable merit to support an appeal from the trial court's determination that it was in Hailey's best interest to terminate Clifford's parental rights. Once a parent is found unfit, the focus shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The Act sets forth the factors to be considered whenever a best interest determination is required: "(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 2012). Also relevant in a best interest hearing is the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would have upon the minor's emotion and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 28 The evidence at the best interest hearing showed that Hailey had been in foster care with her two older brothers since she was two days old. Her foster parents already had adopted her brothers and were willing to adopt her. She was comfortable in her foster home and had good relationships with her foster parents and siblings. Hailey's foster parents provided for all of her

therapeutic and medical needs. Garnhart's opinion based on her education and her 12 years of experience as a caseworker was that it would be very difficult for Hailey if she were removed from her foster home, which was the only home she had known.

¶ 29 Although Clifford testified that he loved Hailey and believed he could care for her, the evidence failed to establish Clifford's ability to provide a stable environment for Hailey. Clifford testified that he lacked a permanent residence for a period of time during the months leading up to the best interests hearing. He faced a charge of aggravated DUI in state court, and charges of mail fraud in federal court. He also had a history of domestic disputes with Nicole that required police intervention. Clifford's testimony also failed adequately to explain why he did not succeed in reinstating visitation with Hailey after visits stopped following his September 2012 car accident. According to Clifford, it took approximately five weeks to fix his vehicle, which meant he had transportation beginning sometime in late October 2012.

¶ 30 Based on the evidence at the best interest hearing, the trial court's determination that it was in Hailey's best interest to terminate Clifford's parental rights was not against the manifest weight of the evidence. Therefore, we agree with counsel that there was no issue of arguable merit to support an appeal from the order terminating his parental rights.

¶ 31 **III. CONCLUSION**

¶ 32 After examining the record, the motion to withdraw, and the memorandum of law, we hold that this appeal presents no issue of arguable merit. Thus, we grant counsel's motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 33 Affirmed.