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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ELYJAH D., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 2011-JA-136
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Renee J., Respondent-Appellant).)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appellate counsel's motion to withdraw is allowed and the judgment of the trial court is affirmed where no issues of arguable merit were identified on appeal concerning the trial court's rulings that respondent was shown to be unfit by clear and convincing evidence and that it was in the best interests of the minor that respondent's parental rights be terminated.

¶ 2 Respondent, Renee J.,¹ appeals from the trial court's order declaring her an unfit parent and terminating her parental rights to her son, Elyjah D. On April 14, 2014, the trial court found respondent to be an unfit parent with respect to her minor child, Elyjah D., in that she failed to:

¹ The court also terminated the parental rights of Ryan E., the minor's biological father; however, he is not a party to this appeal.

(1) maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable progress toward the return of the child to respondent within the nine month period following the adjudication of neglected or abused minor under section 2-3 of the Act or dependent minor under section 2-4 of the Juvenile Court Act of 1987 (Act) (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) make reasonable progress toward the return of the child to respondent within any nine month period after the initial period after an adjudication of neglected or abused minor under section 2-3 of the Act or dependent minor under section 2-4 of that Act (750 ILCS 50/1(D)(m)(iii) (West 2012)); and (4) failure to protect the minor from conditions in the minor's environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2012)). Subsequently, the trial court determined that the termination of respondent's parental rights was in the child's best interests. Respondent filed a notice of appeal, and the trial court appointed appellate counsel to represent respondent.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel filed a motion for leave to withdraw.² In his motion, counsel states that he thoroughly reviewed the record and determined there are no meritorious arguments to be made in support of appeal. Contemporaneously with his motion, counsel filed a memorandum of law containing a statement of facts in support of his motion. The memorandum identified two potential arguments on appeal and explained why the arguments lacked merit. Counsel represented that he mailed a copy of the motion and the memorandum to respondent. The clerk of this court also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has passed, and respondent has not presented anything to this

² The *Anders* procedure has been applied to proceedings to terminate parental rights. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000).

court. For the following reasons, we conclude that there are no issues of arguable merit and we allow counsel's motion and affirm the trial court's judgment.

¶ 4 Appellate counsel identified two potential issues for review. First, whether the trial court's finding of unfitness was against the manifest weight of the evidence that respondent failed to make reasonable progress toward the return home of Elyjah. Second, whether the State proved by a preponderance of the evidence that it was in the minors' best interests to terminate respondent's parental rights. As noted above, appellate counsel concludes that these issues are without merit. For the reasons set forth below, we agree that it would be frivolous to argue that the trial court's findings on these issues were erroneous.

¶ 5 Section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2012)) outlines a bifurcated procedure to determine whether a parent's rights should be terminated. First, the court must determine whether the parent is unfit. See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). Section 1(D) of the Adoption Act (Adoption Act) (750 ILCS 50/1(D) (West 2012)) lists various grounds under which a parent may be found unfit, any one of which standing alone may support such a finding. *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). We will not disturb a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion to the trial court is clearly apparent. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court must determine that the parent is unfit by clear and convincing evidence. *D.T.*, 212 Ill. 2d at 364. If a court finds a parent unfit, it must then determine whether the termination of parental rights would serve the child's best interest. *Id.* at 352. The trial court must determine that termination of the parent's parental rights is in the best interests of the child by a preponderance of evidence. *Id.* at 365.

¶ 6 In this case, the trial court found respondent unfit for, *inter alia*, failing to make reasonable progress toward the return of the minor to her within nine months after the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2012). “Reasonable progress” is an objective standard that “may be found when the trial court can conclude the parent’s progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future.” *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051 (2003).

¶ 7 Here, the record shows that Elyjah was removed from respondent’s home on April 23, 2011, when he was four-months old because a physical examination revealed that he had eight rib fractures in various stages of healing, multiple bruises to his face, torso, head, and back, and hyperextension of his arms. Neither respondent nor her then live-in “paramour” Bryan J., provided a credible explanation for Elyjah’s injuries. Bryan was criminally charged for such. On September 14, 2011, respondent stipulated to the allegations contained in count I of the State’s petition and Elyjah was adjudicated neglected and custody and guardianship was granted to the DCFS. Count I alleged that Elyjah was an abused minor pursuant to section 2-3(2)(ii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(2)(ii) (West 2010)) in that Elyjah’s:

“parent, immediate family member, other person responsible for the minor’s welfare, person who is in the same family or household as the minor, individual residing in the same home with the minor or, paramour of the minor’s parent, inflicts, create[d] a substantial risk of injury to such minor, other than by accidental means, which would likely cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function in that [Elyjah] presented with multiple bruising, rib fractures, over extension to arms, is approximately 4 months old, and there is not adequate explanation for the injuries.”

¶ 8 Thus, the initial nine-month period following the adjudication of neglect ended on June 14, 2012. Within this period the trial court ordered that Bryan, who had been criminally charged for causing Elyjah's injuries, have no contact with Elyjah. However, respondent continued to cohabitate with Bryan and respondent married Bryan. Further, respondent failed to provide any credible explanation for Elyjah's injuries; rather respondent continued to maintain throughout the proceedings that Elyjah "bruised easily." In addition, respondent's failed to address Elyjah's injuries during individual counseling during the relevant period. Accordingly, the trial court's finding of unfitness based on failure to make reasonable progress toward the return of the minor to within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) was not against the manifest weight of the evidence.

¶ 9 The other issue identified by appellate counsel concerns the best interests of the minors. Appellate counsel asserts that respondent cannot establish that the trial court erred in determining that it is in the minors' best interests that her parental rights be terminated.

¶ 10 The supreme court has emphasized that at the best-interests phase, "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 State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *Id.* at 366. A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). As noted above, a decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (2002).

¶ 11 Again, we agree with appellate counsel that respondent cannot establish that the trial court's best-interests finding is against the manifest weight of the evidence. Here, the record

contains ample evidence to support the trial court's finding that it was in the best interests of Elyjah to terminate respondent's parental rights. The evidence presented at the hearing indicated that Elyjah was four-months old and had lived with his foster mother, his maternal grandmother, for almost three years. He called his foster mother "Mom." Elyjah's great grandmother also lived in his foster home and cared for him. Elyjah lived in a stable, secure, and loving home. He was "very well bonded" with his foster mother and great grandmother. Elyjah was well adjusted; well cared for; and his physical, emotional, medical, educational, and recreational needs were met on a consistent basis. Elyjah's foster mother testified that she wanted "to keep him [and did not] want to lose him." It is undisputed that respondent and Elyjah were bonded and that during visits respondent fed Elyjah, changed his diapers, and brought him clothing, and presents. Respondent expressed love for Elyjah. However, although Elyjah was always excited to see respondent, he went to his grandmother for his needs. Additionally, there were safety concerns about returning Elyjah to respondent's care because of his prior injuries that occurred while Elyjah lived with respondent and Bryan and they had not taken responsibility for the injuries.

¶ 12 The existence of a bond between a parent and child, standing alone, does not compel the conclusion that termination of parental rights is against the manifest weight of the evidence. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 39. After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the present appeal presents no issues of arguable merit. Thus, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we affirm the trial court's judgment.

¶ 15 Affirmed.