

NOTICE

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2014 IL App (4th) 140122-U

NO. 4-14-0122

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 3, 2014
Carla Bender
4th District Appellate
Court, IL

In re: J.B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 11JA112
RONALD BROWN,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate counsel's motion to withdraw is granted and the trial court's judgment affirmed where the court's termination of respondent's parental rights is supported by the record and the record reflects no meritorious issues which can be presented for review.

¶ 2 On January 14, 2014, the trial court terminated respondent Ronald Brown's parental rights to his child, J.B. (born November 5, 2007). Respondent appealed and his appellate counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting no meritorious issues exist for appeal. We grant appellate counsel's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 J.B. is the child of respondent and Yvonne Bass. Yvonne also has two other

children (one born while J.B.'s case was pending) who were both part of the underlying proceedings; however, neither Yvonne (whose parental rights to J.B. were also terminated) nor J.B.'s younger half-siblings are subjects of this appeal. We address the issues only as they relate to respondent and J.B.

¶ 5 On October 18, 2011, the State filed a petition for adjudication of wardship, alleging J.B. and his younger half-sister were neglected minors. It asserted the children's environment was injurious to their welfare when in Yvonne's care due to her unresolved issues of domestic violence and/or anger management.

¶ 6 On November 1, 2011, a notice of a pretrial hearing, set for November 18, 2011, and directed to respondent at "15100 7th Avenue, Phoenix, IL 60426" was filed. The notice stated it was served on respondent by "[d]epositing a true and correct copy *** in the U.S. Mail plainly addressed to party at address above with postage fully pre-paid or by hand-delivery." On November 13, 2011, respondent was served with a summons in the matter at the same address.

¶ 7 Respondent did not appear at the hearings on November 18 or December 7, 2011. However, at the December hearing, the State reported respondent had contacted the State's Attorney's office and asserted he intended to wait until he received paternity-testing results before he would appear in court. On December 15, 2011, those results were filed with the court, indicating respondent was J.B.'s biological father. On January 3, 2012, the parties, including respondent, appeared in court and Yvonne admitted the neglect allegation in the State's petition. The same day, the trial court entered its order, adjudicating J.B. and his half-sibling neglected minors and setting the matter for a dispositional hearing.

¶ 8 On February 14, 2012, a dispositional report was filed. According to the report,

respondent's last reported address was 15100 7th Avenue in Phoenix, Illinois, but in January 2012, he indicated he was moving to Indiana and provided no forwarding address. Further, it stated respondent had not had any contact with the Department of Children and Family Services (DCFS) "since the last court hearing at the beginning of January."

¶ 9 On February 21, 2012, the trial court held the dispositional hearing. Respondent did not appear at the hearing but the State asserted he had contacted the State's Attorney's office and DCFS and provided a new address of 906 West 151st Street in East Chicago, Indiana. At the conclusion of the hearing, the trial court made J.B. and his half-sibling wards of the court and placed custody and guardianship of the minors with DCFS.

¶ 10 On August 29, 2013, the State filed a petition to terminate respondent's parental rights to J.B. It alleged respondent was unfit because he (1) had abandoned J.B. (750 ILCS 50/1(D)(a) (West 2012)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to J.B.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); and (3) deserted J.B. "for more than [three] months next preceding the commencement of the Adoption proceeding" (750 ILCS 50/1(D)(c) (West 2012)). The State further asserted termination of respondent's parental rights was in J.B.'s best interests.

¶ 11 On October 22, 2013, respondent appeared in court and admitted he was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to J.B.'s welfare. Upon inquiry by the trial court, respondent asserted he understood the allegations against him. Further, he denied that any promises were made to induce his admission or that he had been threatened or forced in any way. The State set forth the following factual basis:

"[T]he State would provide evidence and witnesses that would

show that [respondent] first appeared in this matter on January 3rd, 2012[,] when the adjudicatory order was entered. [Respondent] was given a copy of that order noting the next court date of 2-21-12. [Respondent] did not appear in the courtroom until he was writted by the State for hearing on October 1st, 2013. [Respondent] did have a supervised visit with [J.B. on] January 3rd, 2012[,] as well. He has had no contact with the minor since that time, and he has completed no services."

The court found respondent's admission was freely, voluntarily, and knowingly made and entered an order finding him unfit.

¶ 12 On January 9, 2014, a best-interest report, prepared by court-appointed special advocates (CASA), was filed in the matter. It showed J.B. had resided in the same traditional foster home since being taken into care. His younger half-brother (born during the proceedings) also resided in the home. The report stated J.B. had developed a strong attachment to his foster parents and also a strong bond with his foster siblings. According to the report, J.B. exhibited a sense of security in his foster home; was comfortable and familiar with the home; and showed affection to, and received affection from, his foster family. J.B.'s foster parents expressed their wish to adopt both J.B. and his half-brother upon termination of parental rights. Additionally, J.B. was in kindergarten and doing well academically. He struggled emotionally, suffering from attention deficit/hyperactivity disorder and reactive attachment disorder. The report stated J.B.'s foster family was "consistent in keeping him physically healthy and tending to his emotional [health] by ensuring that he attend[ed] counseling." J.B. was described as "flourishing" in his

foster home.

¶ 13 J.B. was reported as having had only one visit with respondent at the beginning of the case. The CASA worker who authored the report noted that, since being appointed to the case, she had no contact with respondent and he had not participated in services. At the time of the report, respondent was incarcerated in the Cook County correctional center. The report further stated as follows:

"This CASA has never met [respondent], nor had the opportunity to see him interact with his son. Based on his lack of participation with his service plan and the court as well as his lack of interactions with his son throughout this case, it is this CASA's opinion that [respondent] has no desire to parent [J.B]."

¶ 14 On January 14, 2014, the best-interest hearing was conducted. At the State's request and without objection, the trial court took judicial notice of the entire court file. The State also presented testimony from Joy Hershberger, a DCFS caseworker. Hershberger testified she first had contact with respondent in connection with J.B.'s case on November 10, 2011, when she received a message from him stating he could not attend the November 18, 2011, hearing. On November 15, 2011, she spoke with respondent by telephone and he reported that he would not attend any court hearings until after he received the results of his paternity testing. Hershberger first met respondent in person when he appeared in court on January 3, 2012. At that time, he asked to visit with J.B. and Hershberger accommodated his request. She stated on January 3, 2012, respondent had his first visit with J.B. He did not have any visits with J.B. after that date, nor did he send J.B. any cards, gifts, or letters.

¶ 15 On February 21, 2012, Hershberger spoke with respondent by phone. He reported he was unable to make it to court and provided his new address as being in East Chicago, Indiana. Hershberger testified, that same day, she mailed respondent a letter, client-service plan, and other documents to his new address. In April 2012, a letter from a different caseworker to respondent at his Indiana address was returned as "not deliverable." Respondent's case file showed, in May 2012, a caseworker spoke with him by telephone and asked him to report any address changes. Hershberger testified she did not find any further changes in address from respondent in his file. In September and November 2012, letters were sent to respondent at his Indiana address and not returned. However, according to Hershberger, beginning in approximately March 2013, correspondence mailed to respondent was again returned to her office.

¶ 16 The next time Hershberger had in-person contact with respondent was October 1, 2013, when he was present in court pursuant to a writ from Cook County. She noted, prior to that time, she had not received any contact from respondent and his mail was being returned. Hershberger conducted a "diligent search" and learned respondent was incarcerated in the Cook County jail.

¶ 17 Hershberger testified J.B. was in a traditional foster home and his foster parents expressed interest in providing J.B. and his half-brother with permanency. She testified J.B. was a child with heightened needs and she believed those needs were being met in his foster home.

¶ 18 Lisa Burns, J.B.'s foster mother, testified their family consisted of three biological children, J.B., and J.B.'s younger half-brother. She stated J.B. came into the home a couple of weeks before his fourth birthday. Initially, he exhibited extreme anger and rage and had "fits."

However, Burns testified J.B. had "improved dramatically," was doing well in school, and attended counseling sessions. J.B. was also involved in extracurricular activities.

¶ 19 Burns testified J.B. referred to other children in the family as his brothers and sisters. He referred to his foster parents as "mom" and "dad." The foster family also had a good relationship with J.B.'s younger half-sister and her family. Burns noted J.B.'s half-sister lived with the foster family for a period of time but had then "gone home." The two families frequently spoke on the phone and the child visited her half-brothers in the foster home. Burns testified she and her husband loved J.B. and considered him to be their own son. They had no hesitation at the thought of adopting either J.B. or his younger half-brother.

¶ 20 Burns testified the last time J.B. mentioned respondent was prior to their January 2012 visit. She stated as follows:

"I told him that he was going to go visit his daddy, and he asked if it was Ray-Ray, which is [J.B.'s half-sister's] father, and I said [']no,['] and she—he said to me, he goes, [']well, I thought he committed suicide,['] and I said [']no,['] and he said, [']well, who is my daddy,['] and I said, [']well, you're going to go meet him[,'] and he did, and when he came home, he said, [']mommy, he's really mean,['] and that's all that he said."

Burns testified J.B. did not mention respondent after that visit.

¶ 21 Respondent testified on his own behalf. He stated he learned he was J.B.'s father in approximately November 2011, after J.B. became involved with DCFS. Respondent was asked to do an assessment but testified he never found out the results of that assessment or what

services he was supposed to do. He acknowledged that, in August 2013, he was taken into custody for possession of a controlled substance. He stated that was his third felony charge and he had previously been in the Illinois Department of Corrections. Respondent asserted, prior to his most recent incarceration, he stayed with his grandmother at 15100 7th Avenue in Phoenix, Illinois. He testified, in 2012, he went to Indiana to get his culinary arts degree and stayed in East Chicago, but he denied that he ever changed his address. Respondent then asserted he told "Miss Delena" from "the agency" that he "had an Indiana address too." He stated he was "pretty sure" he told her he had both addresses. Respondent acknowledged receiving one letter about the case at the Indiana address.

¶ 22 Respondent also acknowledged that he did not appear in court between January 2012 and October 2013. He stated that, after January, he did not have a vehicle. Respondent testified he called before court dates to ask about transportation. On one occasion, he was told he could get transportation, but other times, his calls went unanswered. Respondent further asserted that he initially asked if his grandmother could care for J.B., and his sisters and aunt called to inquire about the minor. According to respondent, Hershberger stated she did not want J.B. to be separated from his half-siblings. Respondent was also told that Yvonne would get "first dibs of getting the kids."

¶ 23 Respondent testified he had been unable to do any services since being incarcerated. He acknowledged "[t]hey had a drug program" that the judge could "mandate [him] to" but the judge did not do that. Respondent testified he was scheduled to be released to his sister's house in Calumet City in February 2014. He asserted he was willing to engage in services and understood that J.B. had some special needs. Respondent testified he also

understood that he did not have a significant bond with J.B. but stated J.B. was his son, whom he loved. He wanted the opportunity to engage in services and raise J.B. Respondent acknowledged that he had not sent J.B. money, cards, gifts, or letters. However, he asserted he tried to contact Hershberger several times and she never returned his calls.

¶ 24 At the conclusion of the hearing, the trial court found termination was in J.B.'s best interests. The same date, the court entered an order terminating respondent's parental rights to J.B.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, respondent's appellate counsel filed a motion to withdraw. Counsel has attached a brief in support of that motion and proof of service of the motion upon respondent has been shown. See *In re Austin C.*, 353 Ill. App. 3d 942, 945, 823 N.E.2d 981, 983-84 (2004) (citing *In re S.M.*, 314 Ill. App. 3d 682, 685-86, 732 N.E.2d 140, 143 (2000), and stating the proper *Anders* procedure in parental-termination cases). This court gave respondent leave to file additional points and authorities on or before May 23, 2014, but he has not responded.

¶ 28 A. Unfitness

¶ 29 Appellate counsel notes respondent admitted that he was unfit as alleged in the State's petition to terminate his parental rights. As a potential issue for review, she has identified ineffective assistance of respondent's trial counsel in advising respondent to stipulate to unfitness. However, appellate counsel asserts such an argument would not succeed as respondent could not prove he was prejudiced by any deficient performance. We agree that no meritorious issue can be raised with respect to the trial court's unfitness finding.

¶ 30 Parental rights may be involuntarily terminated where the trial court finds that a parent is unfit pursuant to grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). The State must prove parental unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). On review, the trial court's unfitness determination will not be disturbed "unless it is contrary to the manifest weight of the evidence," and a court's decision is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 516-17.

¶ 31 Pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)), a parent may be found unfit for failing "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." A parent's admission of unfitness must be knowing and voluntary. *In re M.H.*, 196 Ill. 2d 356, 366, 751 N.E.2d 1134, 1142 (2001). The State must provide a factual basis for the parent's admission, which "ensures that the State has a basis for its allegation of unfitness" and "makes certain that a parent's admission of unfitness is knowing and voluntary." *M.H.*, 196 Ill. 2d at 365-66, 751 N.E.2d at 1141. Further, "[t]he factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed." *M.H.*, 196 Ill. 2d at 366, 751 N.E.2d at 1142.

¶ 32 In termination proceedings, a parent is entitled to effective assistance of counsel and, in reviewing ineffective-assistance claims on appeal, we employ the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re C.C.*, 368 Ill. App. 3d 744, 748, 859

N.E.2d 170, 173 (2006). Pursuant to *Strickland*, "to prevail on an ineffective-assistance claim, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's unprofessional errors, the result of the proceedings would have been different." *C.C.*, 368 Ill. App. 3d at 747, 859 N.E.2d at 172 (citing *People v. Reid*, 179 Ill. 2d 297, 310, 688 N.E.2d 1156, 1162 (1997) (citing *Strickland*, 466 U.S. 668)). On review, we may "choose to resolve [an] ineffective-assistance claim by reaching only the prejudice prong of the *Strickland* test, for lack of prejudice renders irrelevant the issue of counsel's performance." *C.C.*, 368 Ill. App. 3d at 748, 859 N.E.2d at 173.

¶ 33 As stated, respondent appeared in court and admitted he was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to J.B.'s welfare. Upon questioning by the trial court, respondent asserted he understood the allegations against him, denied that any promises were made to induce his admission, and denied that he had been threatened or forced into admitting his unfitness. The State provided a factual basis that respondent first appeared in the matter on January 3, 2012, at the adjudicatory hearing; did not appear again until October 1, 2013; had only one visit with J.B. on January 3, 2012; had no contact with J.B. after January 3, 2012; and completed no services.

¶ 34 Here, the record shows respondent's admission was knowingly and voluntarily made. He had the opportunity to hear facts relating to the State's allegations of unfitness and made no challenge or objection to those facts. Instead, respondent asserted his admission was made knowingly and voluntarily. Moreover, the factual basis provided by the State is supported by the record on appeal, showing only minimal participation by respondent in the underlying proceedings. Under these circumstances, respondent cannot establish prejudice under *Strickland*.

Specifically, he cannot show that the result of the termination proceedings would have been different had he not admitted he was unfit, particularly where the record shows only a single contact with J.B. while the case was pending and that respondent failed to engage in services.

¶ 35 B. Best Interests

¶ 36 On appeal, appellate counsel also argues respondent can raise no meritorious issue for review with respect to the trial court's best-interest finding. She contends the court analyzed each relevant factor based upon evidence adduced at the best-interest hearing and the facts do not demonstrate that the court should have reached the opposite result. We also agree that no meritorious issue can be raised with respect to the court's best-interest finding.

¶ 37 Once a parent is found unfit, the matter advances to the best-interest stage of termination proceedings, where "the trial court must give full and serious consideration to the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). The State has the burden of proving that termination is in the child's best interests by a preponderance of the evidence. *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 290-91. When determining a child's best interests, the court must consider the following factors in the context of the child's age and developmental needs:

- "(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, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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).

¶ 38 On review, the trial court's best-interest determination will not be reversed "unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918

N.E.2d at 291. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 39 Here, evidence at the best-interest hearing showed J.B. had resided in the same foster home since he was taken into care in October 2011, just before his fourth birthday. He was doing well in the home and his emotional needs were being met. J.B. had strong attachments and bonds with his foster family. He referred to his foster parents as "mom" and "dad" and his foster siblings as his brothers and sisters. Respondent's younger half-brother was also in the home. The foster parents wanted to provide both J.B. and his half-brother with permanency through adoption.

¶ 40 Conversely, J.B. had only a single visit with respondent while the case was pending and no other contact. The evidence failed to indicate any significant relationship existed between the two either before or after J.B. was taken into care. Although respondent was served in the case in November 2011 and aware that it was pending, he failed to keep in contact with either the court or caseworkers. He did not complete any services and was in no position to have J.B. placed in his care either at the time of the termination proceedings or at any point in the foreseeable future.

¶ 41 As respondent's appellate counsel points out, the record shows the trial court considered the relevant factors in finding termination was in J.B.'s best interests. The record supports its determination and does not demonstrate that the court should have reached the opposite result. The court's decision was not against the manifest weight of the evidence.

¶ 42

III. CONCLUSION

¶ 43 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 44 Affirmed.