

2012 IL App (2d) 120290-U
No. 2—12—0290
Order filed August 14, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> H.S.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
A Minor.	)	
	)	
	)	No. 09 JA 108
(The People of the State of Illinois, Petitioner-	)	
Appellee, v. Rronda S., Respondent-Appellant.)	)	
	)	Honorable
	)	Mary Linn Green
	)	Judge, Presiding.

JUSTICE Birkett delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

Held: In termination proceedings, there were no potentially meritorious issues for appeal. Therefore, appellate counsel's motion to withdraw was allowed.

¶ 1 In March 2012, the trial court entered an order terminating the parental rights of respondent, Rronda¹ S., to her daughter, H.S. Pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel now moves to withdraw as counsel on appeal. In his motion, counsel states that he has read the record and found no issue

¹Court documents indicate that this is the correct spelling of respondent's name.

of arguable merit. Counsel supports his motion with a memorandum of law providing a statement of facts, identification of several potential issues on appeal, and an argument why each lacks arguable merit. See *Anders*, 386 U.S. at 744 (appellate counsel must accompany his request to withdraw with a brief “referring to anything in the record that might arguably support the appeal”). We granted respondent 30 days to respond to the motion to withdraw, and she has not responded. Because we agree with counsel that there are no potentially meritorious issues for appeal, we grant counsel’s motion.

¶ 2

I. FACTS

¶ 3 On March 19, 2009, the State filed a neglect petition and alleged that six-day-old H.S. was a neglected minor due to an injurious environment. As a basis for the petition, the State noted that the minor’s siblings were in the custody and guardianship of the Department of Children and Family Services (DCFS) and that the minor’s parents had failed to cure the conditions that led to their removal, therefore placing H.S. at risk of harm. See 705 ILCS 405/2-3(1)(b) (West 2008). The respondent had her other children removed from her care due to her addiction to cocaine. At a temporary shelter care hearing held the same day, respondent waived a shelter care hearing and agreed to temporary guardianship of the minor being placed with DCFS, with discretion to place the child either in foster care or with her mother.

¶ 4 In May 2009, respondent agreed to stipulate to the allegations in the neglect petition, and the minor was adjudicated neglected. Respondent was ordered to cooperate in drug treatment, drug testing and a drug use assessment. The court also ordered the father to complete DNA testing to assure paternity of the minor.

¶ 5 At the first permanency review in November 2009, caseworker Amanda Nielsen from the Children's Home and Safety Aid Society of Illinois (CHASI) testified that the minor was in respondent's care, and that respondent had been cooperating in her drug rehabilitation and doing well. Respondent was scheduled to transition to an apartment and had been drug-free for almost one year. The alleged father was also present in court. The DNA testing had been completed and he was excluded as the biological father of the child. The trial court then terminated his involvement in this case.

¶ 6 Respondent testified that she was transitioning into the community in Aurora where she planned to remain. Respondent's four other children were present in court, although they resided with their maternal grandmother. The court noted the close relationship between respondent and all of her children. The case worker recommended that the case be closed at that time, but the State and the guardian ad litem objected based upon their beliefs that respondent needed more time to stay clean and sober. The court continued the case for six months for status, but congratulated respondent on her performance. The case was set for May 4, 2010, for "possible closure."

¶ 7 However, on March 24, 2010, the case came before the trial court for a new shelter care hearing. Respondent had left H.S. with a family member but did not return to pick her up. The State was concerned that respondent had relapsed. Temporary custody of the minor was placed with DCFS and the State filed a motion to modify custody to place the minor with DCFS. On the pretrial date of May 21, 2010, respondent still had not been located and the case was continued for trial.

¶ 8 On June 2, 2010, a hearing was held on the State's motion to modify custody. Respondent was present with caseworker Lynn Leslin of CHASI. Leslin testified that respondent dropped H.S. off with a relative on March 19, 2010, and did not return to pick her up. Respondent had not

contacted CHASI until a week before the June 2 hearing. Respondent admitted to Leslin that she had relapsed three months ago. Respondent had been asked to complete a drug test but she had not.

¶ 9 Respondent testified that she was living in a motel in Rockford. She said that when she left H.S. with her aunt and tried to pick up the child three days later, her aunt did not return the child to her because the caseworker told her aunt not to do so. Her aunt told her that she could not give H.S. back to her because respondent had left her treatment at Life Springs. Respondent said that she had called and left messages for her new caseworker but she had received no response. According to respondent, she was attending Narcotics Anonymous meetings for the past three weeks. At the end of the hearing, the trial court granted the State's motion to modify custody. Noting respondent's previous good efforts, the trial court said to her, "the door is open for you, but you've got to do some things to regain the trust that people previously had in you."

¶ 10 On December 7, 2010, a permanency hearing was held. Respondent was not present. Caseworker Leslin testified that respondent had not re-entered drug treatment since the hearing. She met with respondent on June 10, 2010, and respondent told her that she was homeless, living on the streets, had no car or money, and was engaging in prostitution in exchange for drugs. The court then found that the goal should remain "return home," but that respondent had not made reasonable efforts to achieve that goal. The case was set for another permanency review hearing on June 7, 2011. The June 7 hearing was later continued to August 1, 2011.

¶ 11 Respondent was present at the August 1, 2011 permanency hearing. At that hearing, a new caseworker from CHASI, Heather France, testified. France said she has been the caseworker on this case since January 2011. France said that H.S., who was then two years old, was doing well in her foster home. With regard to respondent, France said that she had self-reported using cocaine, but

France had no information as to whom she made this report and when it was made. Respondent had been referred for treatment, and had attended detox in March 2011, but she did not complete the assessment for the follow-up program. Respondent had not engaged in individual counseling and had only sporadic contact with CHASI. However, respondent was attending some of the weekly supervised visits with H.S. The trial court continued the case for a three month review date in November.

¶ 12 On October 3, 2011, a status hearing was held because the court received a “concerned report” from CHASI case manager Renee Haley-Harden. Haley-Harden said that respondent was currently pregnant. On August 2, 2011 she tested positive for cannabis and cocaine at the highest level, and on September 22, 2011 she tested positive for cocaine at the highest level. She was not receiving any prenatal care. Based upon this testimony, the trial court found respondent to be in direct criminal contempt and issued a warrant for her arrest.

¶ 13 On October 29, 2011, respondent appeared before the court on the warrant. Haley-Harden testified that on August 30, respondent showed up for a supervised visit and Haley-Harden noticed that respondent had physical symptoms of pregnancy. Respondent confirmed that she was pregnant, and Haley-Harden took her to the Rockford Health Department, where her pregnancy was confirmed through a test. Respondent also took a drug test that day, and she tested positive for cocaine at the highest level. Haley-Harden again referred to respondent’s subsequent drug test on September 22, where she again tested positive for cocaine at the highest level. The local clinic confirmed that respondent had not been seen there as a patient since the birth of H.S. in 2009.

¶ 14 Based on the violation of the prior court order that respondent refrain from using drugs, the trial court found respondent in indirect criminal contempt and sentenced her to the Winnebago County Jail for 180 days “or until she delivers her child.”

¶ 15 At the permanency review on November 7, 2011, Haley-Harden testified that respondent was having 30-minute visitations in jail due to her incarceration. Haley-Harden said that during the last reporting period, respondent had not engaged in drug treatment, had not maintained stable housing, had not visited regularly, did not maintain contact with the agency, and had been repeatedly using drugs or failing to complete drug testing. Based on this evidence, the trial court changed the goal to substitute care pending a determination on termination of parental rights.

¶ 16 On December 2, 2011 the State filed a motion for termination of parental rights. In the motion, the State alleged that respondent was unfit on three grounds: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) failure to protect the child from conditions in her environment which were injurious to the child’s welfare (750 ILCS 50/1(D)(g) (West 2010)); and (3) failure to make reasonable progress toward the return of the child within a nine-month period, after the initial 9 month period following adjudication (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 17 At a pretrial conference on the State’s motion to terminate, respondent did not appear. She had been released from custody after the birth of her son on December 27, 2011. The trial court noted that respondent had actual notice of the date of the pre-trial conference because an order was entered to that effect on December 12 and she was still incarcerated at that time; and (2) she was present in court when the pre-trial conference date was selected.

¶ 18 The trial on the termination of respondent's parental rights to H.S. began on February 9, 2012. Again, respondent did not appear. Caseworker Haley-Harden testified that she had been respondent's caseworker since August 2011. Respondent had not had a visit with H.S. since being released from custody in December 2011, and had not visited the child since September except for the visits which took place in the jail during her detention. She had come to one visit in August 2011, but had attended no visits in June or July of that year.

¶ 19 Haley-Harden described the service plans that had been prepared for the respondent and in which she was required to participate. During the most recent plan period, respondent had not engaged in drug treatment or voluntarily completed drug testing. The few times that respondent did complete a drug test she was positive for usage, specifically cocaine. She had not visited H.S. except for those few visits that Haley-Harden had already mentioned.

¶ 20 At the close of evidence, the State voluntarily dismissed count II of the motion for termination. After hearing arguments, the court found respondent unfit as to counts I and III in the motion for termination of parental rights.

¶ 21 The trial court proceeded immediately to a best interest hearing. At that hearing, Haley-Harden testified that H.S. was placed in the foster home of a relative where she was very bonded with both the foster mother and father. H.S. was on target developmentally and receiving regular medical check-ups. She was involved with her foster parents' church and visited extended family members often. H.S. had some attachment to respondent, but called her by her first name and referred to her as "sister" rather than "mother." She was attached and comfortable in her foster parents' home.

¶ 22 Haley-Harden testified that before she could be considered a placement for H.S. respondent would have to participate in long term in-patient drug rehabilitation. According to her, the need for permanency for H.S. mitigated against waiting a significant amount of time before respondent could even have unsupervised visits with her. Based upon these factors, Haley-Harden believed that it was in H.S.'s best interest that she be freed for adoption and therefore that respondent's parental rights be terminated.

¶ 23 On cross-examination, Haley-Harden said that DCFS had also taken respondent's four older children and the new baby boy away from respondent. Three of the children, including the baby, lived with the maternal grandmother. Another child had been adopted by respondent's brother, and another child lived with his father. H.S.'s foster parents are respondent's aunt and uncle, and they wanted to adopt her. The family was close and the siblings saw each other on weekends. After hearing all the evidence, the trial court found it was in H.S.'s best interests that respondent's parental rights be terminated.

¶ 24

II. ANALYSIS

¶ 25 Section 2–29 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2–29 (West 2010)) provides a bifurcated procedure for termination of parental rights. To terminate a party's parental rights, the trial court must find: (1) the party is unfit, by clear and convincing evidence; and (2) by a preponderance of the evidence, that termination of the party's parental rights is in the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). The State carries the burden of proof at both stages of the proceeding. *Id.* at 354. Neither an unfitness finding nor a best interest finding will be disturbed on review unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App.

3d 609, 613, 617 (2009). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006).

¶ 26 We agree with counsel that there is no colorable argument that respondent is a fit parent. Here, the first ground upon which the trial court found respondent to be unfit was based upon her failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2010). Since the language in section 1(D)(b) of the Act is in the disjunctive, any of the three grounds identified—the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the welfare of the child—may be established as a basis for unfitness. *In re C.L.T.*, 302 Ill. App. 3d 770, 773 (1999).

¶ 27 Here, there is ample evidence in the record to support a finding of unfitness on this ground. Although respondent did very well for the first year after this case was opened, well enough for the trial court to consider closing the case in November 2009, respondent relapsed into her drug habit soon thereafter and has not been able to successfully stay clean since. The evidence presented showed that the respondent did not take advantage of the drug treatment resources available to her, and she did not voluntarily complete drug testing. When she did get tested, she always tested positive for drugs. She very rarely visited H.S., and she did not successfully complete her service plans. For all these reasons, we find that the trial court properly found respondent to be an unfit parent for her failure to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of her child. 750 ILCS 50/1(D)(b) (West 2010).

¶ 28 Although the trial court also found respondent unfit on another ground, “[a] parent’s rights may be terminated if a single alleged ground of unfitness is supported by clear and convincing

evidence.” *In re D.C.*, 209 Ill. 2d 287, 296 (2004). Since at least one ground of unfitness was proven by clear and convincing evidence, we need not consider whether there are any meritorious bases for challenging the remaining ground of unfitness.

¶ 29 We now turn to the question of best interests. At the best interests stage the court “focuses upon the child’s welfare and whether termination would improve the child’s future financial, social and emotional atmosphere.” *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002). “The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child’s needs, parental rights *should* be terminated. Accordingly, at a best interests hearing, the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The trial court “cannot rely solely on fitness findings to terminate parental rights.” *D.M.*, 336 Ill. App. 3d at 772. The statutory factors that the trial court shall consider in the context of the child’s age and developmental needs include: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s familial, cultural, and religious background and ties; (4) the child’s sense of attachment, including love, security, familiarity, continuity of relationships with parent figures, and considering the least disruptive placement alternative for the child; (5) the child’s wishes and goals; (6) community ties; (7) the child’s need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person(s) available to care for the child. 705 ILCS 405/1–3(4.05) (West 2010).

¶ 30 Here, the trial court’s finding that it was in H.S.’s best interests for respondent’s parental rights to be terminated was not against the manifest weight of the evidence. The evidence introduced at the best interests hearing indicated that H.S. was on target developmentally and receiving regular

medical check-ups. Her foster parents, respondent's aunt and uncle, were very affectionate to H.S. and provided her with a stable home environment. They took H.S. to church and visited regularly with extended family. They were also willing to adopt H.S., who demonstrated affection and attachment to them. On the other hand, H.S. did not view respondent as her mother, and instead referred to her as a sister. Viewed as a whole, we agree that termination of respondent's parental rights would improve H.S.'s future financial, social, emotional atmosphere. See *In re D.M.*, 336 Ill. App. 3d 766, 771-72 (2002). Therefore, the trial court properly found that it was in H.S.'s best interests for respondent's parental rights to be terminated.

¶ 31 Finally, we turn to the trial court's order finding respondent in indirect criminal contempt for testing positive for drugs in violation of its earlier court order, and its sentence of 180 days in jail or until respondent delivered her child.

¶ 32 In his memorandum of law in support of his motion to withdraw, counsel notes that the trial court's finding of indirect criminal contempt could perhaps be reversed on procedural grounds, since the wording of the court's order indicated that the purpose of the sentence was to protect the expected child and not to punish the violation of the court order. However, counsel acknowledges that nothing in the record suggests that the result of the hearing on the motion to terminate respondent's parental rights to H.S. would have been different in any way had the contempt finding not been entered.

¶ 33 Criminal contempt sanctions are retrospective in nature and punish the contemnor for past acts which she cannot undo. *People v. Lindsey*, 199 Ill. 2d 460, 468 (2002). We agree with counsel that the language of the order demonstrated that the purpose of the finding of indirect criminal contempt was to protect respondent's unborn child, and for that reason it was improper. However,

we likewise agree with counsel that the contempt order did not have any effect on the termination proceedings. Therefore, such an argument cannot aid respondent here.

¶ 34 After examining the record and the motion to withdraw, we agree with counsel that his appeal presents no issue of arguable merit. Therefore, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 35 The judgment of the circuit court of Winnebago County is affirmed.

¶ 36 Affirmed.