2012 IL App (2d) 120455-U
No. 2-12-0455
Order filed August 9, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re AVA L., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 09-JA-188
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Dijon L.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appellate counsel's motion to withdraw would be allowed and the judgment of the circuit court would be 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 interest of the minor that respondent's parental rights be terminated.

¶ 1 Respondent, Dijon L.,[1] appeals from an order of the circuit court of Winnebago County declaring him an unfit parent and terminating his parental rights to his daughter, Ava L.[2] The trial court determined that respondent was an unfit parent in that he: (1) abandoned the child (750 ILCS 50/1(D)(a) (West 2010)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2010)); (3) deserted the child (750 ILCS 50/1(D)(c) (West 2010)); (4) failed to protect the child from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2010)); (5) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from him within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2010)); (6) failed to make reasonable progress toward the return of the child to him within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (7) failed to make reasonable progress toward the return of the child to him during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)). Subsequently, the court concluded that the termination of respondent's parental rights was in the child's best interest and respondent filed a notice of appeal.

¶ 2 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), appellate counsel has filed a

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[1] Respondent's name is spelled various ways in the record on appeal. We adopt the spelling used in respondent's notice of appeal.

[2] The court also terminated the parental rights of B.B., the minor's biological mother, but she is not a party to this appeal.

motion for leave to withdraw as counsel on appeal.[3] In his motion, appellate counsel represents that he has reviewed the record but has not discovered any issue that would warrant relief on appeal. Contemporaneously with his motion, counsel filed a memorandum of law summarizing the proceedings in the trial court, identifying two potential meritorious issues for appeal, and explaining why each issue lacks arguable merit. Counsel further represents that he mailed a copy of the motion and the memorandum of law to respondent. 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. Respondent has filed a timely *pro se* response, the relevant contents of which we discuss below.

¶ 3 Section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2010)) 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 Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). If a court finds a parent unfit, it must then determine whether the termination of parental rights would serve the child's best interest. See *Syck*, 138 Ill. 2d at 277. The first potential issue identified by appellate counsel is whether the State met its burden of proof by clear and convincing evidence that respondent failed to maintain a reasonable degree of interest in, concern over, or responsibility for the minor's welfare. The second potential issue is whether the State proved by a preponderance of the evidence that it was in the minor's best interest to terminate respondent's parental rights. As noted above, counsel concludes that these issue are without merit. We agree.

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

¶ 4 With respect to the first potential issue, we note that the trial court found respondent unfit on seven separate grounds, including respondent's "[f]ailure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare." See 750 ILCS 50/1(D)(b) (West 2010). Because the language of this ground is in the disjunctive, any of the three elements (interest, concern, or responsibility) may be considered as its own basis for unfitness. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). In assessing whether a parent has failed to maintain a reasonable degree of interest in, concern over, or responsibility for the minor's welfare, courts consider various factors, including the parent's past efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare. *C.E.*, 406 Ill. App. 3d at 108. Moreover, a court must examine the parent's conduct in the context of his or her circumstances. *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994). Relevant circumstances include difficulty in obtaining transportation, the parent's poverty, statements made by others to discourage visitation, and whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference towards them. *T.D.*, 268 Ill.App.3d at 246. If visitation is not possible, letters, cards, gifts, and telephone calls may suffice to show a parent's concern for and interest in the children. *T.D.*, 268 Ill. App. 3d at 246. We note that it is the parent's efforts, not the success of those efforts, that are relevant. *T.D.*, 268 Ill. App. 3d at 246. A trial court's ruling on unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence, *i.e.*, an opposite conclusion is clearly apparent. *In re Joshua S.*, 2012 IL App (2d) 120197, ¶ 44.

¶ 5 In this case, the record supports the trial court's ruling that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Ava's welfare. Ava was born on February 24, 2008, the last of three children born to respondent and B.B. Ava came into the

protective custody of the Illinois Department of Children and Family Services (DCFS) in May 2009, following an incident of domestic violence between respondent and B.B. while Ava was present. Upon being taken into custody, Ava was placed in traditional foster care. Despite reasonable efforts to inform respondent of the proceedings involving Ava, he did not appear at the initial shelter care hearing in May 2009. As such, the trial court prohibited respondent from contacting or visiting Ava until he presented himself to the court. Ava was adjudicated neglected on August 9, 2009. Respondent's first appearance of record before the court was on January 26, 2010, at which time, the court ordered that respondent's visits with Ava be at the discretion of DCFS. The State filed a petition to terminate respondent's parental rights on May 11, 2011. The unfitness hearing was held on August 17, 2011.

¶ 6 At the unfitness hearing, the principal caseworker testified that respondent did not visit Ava between May 2009, when she was placed with foster parents, and the date of the unfitness hearing, and he did not request visitation during this time period. We note that respondent was prohibited from contacting or visiting Ava during part of this time due to the trial court's order. However, there was no evidence that respondent pursued visitation after the order was lifted. Further, the caseworker testified that during the pendency of the case, respondent did not send any cards, letters, or gifts to the minor, he did not inquire about her well being, he did not attend any of Ava's doctor's visits, and his contact with DCFS was minimal. The caseworker also indicated that parents are encouraged to contribute financially to the raising of the children while in care and to provide clothing for the children, but respondent did neither. Moreover, respondent was never found to have made reasonable efforts to reunification during any single review period and, during the pendency of the case, he did not offer an explanation for his failure to visit the minor.

¶ 7 In his response to appellate counsel's motion, respondent insists that he did not contact Ava because he "was told to just wait and wait and was told by the social workers that *** trying to see the kids would psychological damage [*sic*] the children and a psychologist would need to be present at any meeting, but nothing was ever arranged." He also claims that he "was involved in all [his] children's lives when [he] was allowed to be involved." As noted above, however, the evidence does not support these contentions. Significantly, in the almost 19-month period between the date the trial court lifted its order preventing respondent from visiting Ava and the date of the unfitness hearing, respondent was aware that his parental rights could be terminated. Yet he did nothing to show that he wished to maintain a reasonable degree of interest, concern, or responsibility as to Ava's welfare. He did not visit Ava or request visitation with her. He did not send her any cards, letters, or gifts. He did not inquire about her well being. He did not attend any of her doctor's visits. He did not contribute financially to her rearing. We find this evidence sufficient for the State to meet its burden by clear and convincing evidence. As only one ground of unfitness need be proved by clear and convincing evidence (*In re R.L.*, 352 Ill. App. 3d 985, 998 (2004)), the trial court's decision that respondent is unfit is not against the manifest weight of the evidence.

¶ 8 Turning to the second potential issue, we note that at the second stage of a termination proceeding, the State is required to prove by a preponderance of the evidence that it is in the minor's best interest to terminate parental rights. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008). The trial court's decision to terminate parental rights will not be overturned on appeal unless it is against the manifest weight of the evidence. *In re C.M.*, 319 Ill. App. 3d 344, 360 (2001). In making its decision, the trial court must consider the following factors in the context of the child's age and developmental needs: (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; (4) the child's sense of attachment, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 9 Given the factors listed above as applied to the facts of this case, it is clear that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. The evidence presented at the best-interest hearing establishes that the minor has resided with her current foster family since she was taken into protective custody in May 2009. At that time, Ava was just over one year of age. The evidence also establishes that the minor has bonded with her foster family, she identifies herself as a member of the foster parent's family, and she considers her foster brothers and sisters as her siblings. Ava's foster parents ensure that the child's medical and educational needs are met. Ava's foster mother testified that she and her husband would like Ava to remain in their home and to adopt her. There was also testimony that Ava has expressed a desire to remain with the foster parents. Moreover, the caseworker opined that it would be in Ava's best interest to be freed up for adoption to the current foster family. She testified that if the minor is not freed up for adoption, it would take one or two years for respondent to engage in and complete services in order to return the minor to his care. However, the caseworker also pointed out that Ava has not asked about her biological parents or expressed any sort of bond with them. While Ava has shown a bond with her two biological brothers, who are living with another foster family, Ava's foster parents have indicated that they are committed to maintaining that relationship after the

adoption. Ava's foster parents have also indicated that they are supportive of maintaining the relationship between Ava and her biological parents if it is safe to do so.

¶ 10 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law, respondent's response, and the relevant case law, we agree with appellate counsel that there are no potential issues that would warrant relief on appeal. Accordingly, we allow the motion of appellate counsel to withdraw as counsel in this appeal, and we affirm the judgment of the circuit court of Winnebago County.

¶ 11 Affirmed.