2014 IL App (2d) 140591-U
No. 2-14-0591
Order filed October 16, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Renando F. and Fernanda F.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Minors.	)	
	)	Nos. 11-JA-330
	)	11-JA-331
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Fernando F.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw as counsel granted where there were no issues of arguable merit regarding the trial court's findings that respondent was an unfit parent and that termination of respondent's parental rights was in the minors' best interests.

¶ 2 On September 6, 2013, the State petitioned to terminate respondent's, Fernando F.'s, parental rights to his children, Renando F. and Fernanda F. On April 3, 2014, the trial court found the State proved by clear and convincing evidence that respondent is an unfit parent and, on May 7, 2014, the court found that it is in the children's best interests for respondent's parental

rights to be terminated. Respondent appealed, and the Office of the State Appellate Defender was appointed as counsel.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies to termination cases). The attorney states that he has read the record and has found no issues of arguable merit. Further, the attorney supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded.

¶ 4 Counsel asserts that it would be frivolous to argue that it was against the manifest weight of the evidence for the trial court to find that: (1) respondent is unfit; and (2) termination of respondent's parental rights is in the children's best interests. For the following reasons, we agree.

¶ 5 I. BACKGROUND

¶ 6 In October 2011, the State filed neglect petitions as to each minor, alleging that they had been placed at risk of harm by their mother's actions (attempting to strangle and holding a knife to another child's throat). According to a Department of Children and Family Services (DCFS) report, both parents had previous DCFS involvement after selling heroin and possessing marijuana and drug paraphernalia in the minors' presence. Respondent was incarcerated when the neglect petitions were filed, but was provided notice of the proceedings. In March 2012, the mother stipulated to one count of the neglect petitions and the children were adjudicated neglected.

¶ 7 On July 25, 2012, at a permanency review hearing, caseworker Linda Fultz testified that, because respondent was incarcerated, a decision had been made to allow only one visit with the children. Respondent had informed Fultz that, while in prison, he had participated in Alcoholics Anonymous (AA) and received completion certificates for anger management and healthy relationships training. The court found that, under the circumstances, respondent had made reasonable efforts for the review period.

¶ 8 On January 23, 2013, Fultz testified that respondent was released from prison on September 5, 2012. Respondent participated in visitation between September 29, and December 1, 2012, and he told Fultz that he had participated in AA meetings and a spiritual development class while incarcerated. However, Fultz testified that, although respondent was appropriate and "very, very loving" during visits, he had not made any attempts to visit between December 1, 2012, and the January 23, 2013, hearing. (However, the record suggests he did see the children over Christmas.) Further, she testified that respondent is "very unapproachable. He's very rude and he's close-minded." The court found respondent failed to make reasonable efforts or progress for the review period.

¶ 9 On May 29, 2013, Fultz testified that respondent never provided her any certificates of completion for the classes he allegedly took in prison. According to Fultz, respondent did not complete any of the five or six random urine requests given to him (four were requested after the January 23, 2013, hearing), but that he had admitted that, if he had taken a drug test around April 2, 2013, it would have returned positive. Respondent had reported employment at a car wash, and he had completed an assessment at Clarity Counseling and had signed up for services. However, Clarity could not reach respondent because his phone was disconnected. Fultz stated that respondent did not call to report absences from visitation, but he generally reported that

oversleeping and work conflicts could have been to blame. Finally, respondent and the children's mother had an altercation at respondent's residence. The children were present and were forced to leave. It is not clear what the children saw, but the altercation left respondent bleeding. Respondent refused to call the police. According to Fultz, respondent's failure to do so reflected that he was not acting in a protective manner. The court found respondent failed to make reasonable efforts or progress and changed the goal from return home to substitute care pending court determination of parental rights.

¶ 10 On September 6, 2013, the State moved to terminate respondent's parental rights, alleging five bases of unfitness, including that respondent is depraved within the meaning of section 50/1(D)(i) of the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2012)).[1]

¶ 11 The fitness hearing took place on February 5, and March 19, 2014. Respondent testified that, in 1999, he was arrested for criminal fortification and drug sales. He pleaded guilty to criminal fortification. In 2000, respondent was arrested for aggravated discharge of a firearm and he pleaded guilty to the charge. In 2002, respondent pleaded guilty to the manufacture and delivery of cocaine and was sentenced to eight years' imprisonment. In 2008, respondent was arrested for a drug offense, to which he pleaded guilty on February 16, 2010, and was sentenced to seven years' imprisonment. (The State presented a certified copy of the conviction). The four aforementioned convictions all involved felonies. Further, at the time of the hearing, respondent

[1] Section 50/1(D)(i) provides in relevant part that: "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2012).

was incarcerated for felony charges. His incarceration began on October 23, 2013, after termination proceedings had commenced.

¶ 12 Respondent further testified that: (1) between March and September 2010, while incarcerated at Southwestern Correctional Center, he took alcohol and drug classes; (2) between September 11, 2010, and April 6, 2011, while incarcerated at Graham Correctional Center, he took anger management classes; (3) from April 6, 2011, to September 5, 2012, he took parenting leadership classes; and (4) while incarcerated at the Winnebago County jail, he signed up for anger management and parenting classes, but was on a waiting list. Respondent testified that, between September 5, 2012, when he was released from prison, and October 2013, when he returned to prison, he engaged in visitation with the children at his mother's house. He played with the children, gave them snacks, talked with them, and gave them presents. Although respondent purchased clothes and shoes for the children as birthday presents, the locks on his house were changed and he could not get inside to retrieve and present them. Once incarcerated, respondent testified that he telephoned the foster parents two or three times per week to receive updates on the children. In mid-March 2013, because of the incident at his home involving the children's mother and his refusal to call the police, visitation was moved from his home to the agency. Respondent did not agree with the agency's decision and initially stopped visiting the children. He resumed visits a month later and visited them from mid-April to June, 2013.

¶ 13 Respondent testified that he took an assessment at Clarity, but that he did not commence classes because he was under the impression that they were optional and his place of employment did not want him missing work for optional classes. Respondent agreed that he missed drug drops in May 2013, "[b]ecause I felt like that I wasn't getting no help through Lutheran Services. So I refused to comply with the drops." He further agreed that he stopped

contact with Fultz around June 2013 because he felt he was not receiving the help from her that he was promised. Respondent testified that he did not attend doctor's appointments or school meetings because he did not know about them. Respondent agreed that, in November 2012, he did not attend a Rosencrance substance abuse assessment. Respondent further agreed that he did not complete any services after those he took while incarcerated at Southwestern in 2010. Finally, respondent agreed that, in addition to the minors at issue, he has two other children from two different mothers. He pays no child support for any of his children.

¶ 14 Fultz testified that, in March 2012, there was one visit between the children and respondent, who was incarcerated. Thereafter, the children were never placed with respondent between his September 2012 release from prison and his October 2013 incarceration because all services remained incomplete. He received weekly supervised visits at his mother's home until an incident happened in December 2012 that threatened his children's safety. Specifically, the children's mother arrived, there was an altercation, and respondent was struck with glass, causing his arm to bleed. He did not fight back or call the police. When the visits were then moved to the agency, respondent's visits became "spotty" and then he basically stopped visiting. "[F]or the most part [respondent] was uncooperative with me with recommended services, appointments or completing IA needs." Respondent did not cooperate with urine requests, and the two he completed in February 2013, returned positive. He did not complete a Rosencrance substance abuse assessment in November 2012, after his release from prison. Respondent did attempt to attend administrative case reviews, but he did not attend medical or school appointments. Fultz did not know if respondent was aware of those appointments. Respondent did not support the children with clothing, school supplies, etc. He never provided completion certificates to confirm that he completed in-prison programs that met criteria specified in his

service plans. Respondent completed a domestic violence assessment at Clarity, but became "unreachable" and did not complete the follow-up recommendations.

¶ 15 On April 3, 2014, the court found respondent to be an unfit parent on all five grounds alleged in the State's petition. The court noted that, as to the depravity count, respondent had multiple convictions within the last five years. Further, the court noted that respondent has multiple children with different women and he does not support them.

¶ 16 On May 7, 2014, the court commenced the best interests hearing. Case manager Anna McMahon testified that the children (twins, age 5) were residing with foster parents since August 2013 and doing well. They live near their school, the home is appropriately furnished, and the children are appropriately clothed. The foster parents attend to the children's medical, dental, and counseling needs, including helping Fernanda through a recent surgery. The children feel safe and secure with their foster parents, they are affectionate with them, and there are no safety concerns in the home. The children are involved in community activities, including soccer teams and church. The foster parents support allowing the children to have contact with extended family, and they have visited with their aunt and other siblings. While the children know who respondent is and have a bond with him, he is incarcerated and could not provide them a stable and safe home environment. The foster parents are willing to adopt the children.

¶ 17 Respondent testified that he tried to provide the children with clothing, but was ultimately unable to get it to them. Further, he provided them with food during their visits. Respondent testified that the children previously had frequent visits with his mother, whom they referred to as "granny," as well as their aunts and other siblings. The children hugged him at visits, told him they loved him, and there was mutual affection between them. The children call him "dad" or "daddy."

¶ 18 The foster mother testified about her relationship with the children and her observation of them. She testified to her desire to maintain the children's family relationships and testified that they are in a loving, secure, safe home.

¶ 19 The court considered the statutory best interest factors (705 ILCS 405/1-103(4.05) (West 2012)), as well as witness credibility, and found the State had proved by at least a preponderance of the evidence that it is in the children's best interests to terminate respondent's parental rights. This appeal and *Anders* motion followed.

¶ 20 II. ANALYSIS

¶ 21 A. Unfitness Finding

¶ 22 In his motion, respondent's appellate counsel argues that he can raise no meritorious arguments challenging the trial court's unfitness finding. We agree.

¶ 23 As counsel notes, we give great deference to the court's findings of unfitness, and *any one ground*, properly proved, is sufficient to affirm an unfitness finding. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). The court's finding that the State met its burden of establishing unfitness will not be reversed unless it is contrary to the manifest weight of the evidence (*i.e.*, unless the opposite conclusion is clearly evident or the finding is not based on the evidence). *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Here, at a minimum, the court's finding that respondent is depraved (750 ILCS 50/1(D)(i) (West 2012)) is not contrary to the manifest weight of the evidence.

¶ 24 Again, section 50/1(D)(i) provides:

> "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one

> of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2012).

Here, it is undisputed that respondent was convicted of *at least* three felonies, one of which was within five years of the filing of the petition to terminate his parental rights (specifically, the 2010 conviction; the petition to terminate parental rights was filed in 2013).

¶ 25 The remaining question, therefore, is simply whether the court's finding that respondent did not rebut the depravity presumption was contrary to the manifest weight of the evidence. The supreme court has defined depravity as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). A parent's depravity may be shown by "a series of acts or a course of conduct that indicates a moral deficiency and an inability to conform to accepted morality." *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). In determining depravity, the court is required to "closely scrutinize the character and credibility of the parent." *In re J'America B.*, 346 Ill. App. 3d 1034 (2004).

¶ 26 Here, the court's finding is not contrary to the manifest weight of the evidence. The opposite conclusion is not clearly evident. The court based its finding on the fact that respondent fathered multiple children with multiple women and did not support any of them, and the evidence showed that respondent simply stopped visiting the children when he disagreed with Fultz. Compare *In re J.A.*, 249 Ill. App. 3d 553, 563 (2000) (depravity presumption rebutted where the father had constant contact with his children, sometimes visiting more than the service plan recommended, and he was a constant support to them, financially and emotionally). Although respondent testified that he took some classes in prison, that he found a job, and that he made other positive efforts, the court found respondent lacking in credibility. Instead, the court

credited Fultz's testimony that respondent was uncooperative, failed to complete any services required of him, and failed to provide necessary certification of the classes he allegedly took in prison. These findings were not even arguably unreasonable. Finally, respondent's depravity is demonstrated by his serial pattern of arrests and incarceration over a 14-year period, including after his children were taken into care and he was released from prison. Respondent failed during that time to support his children or complete the services required of him. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 599 (2004) (presumption of depravity not rebutted where the father's convictions included seven felony arrests and the father failed to complete any of the services required by the service plans). In summary, the record supports the court's finding that respondent is unfit, at a minimum, on depravity grounds, and appellate counsel would not be able to raise a meritorious argument challenging the unfitness finding.

¶ 27 B. Best-Interests Finding

¶ 28 Respondent's appellate counsel next argues that he can raise no meritorious arguments challenging the trial court's best-interests finding. Again, we agree.

¶ 29 We consider whether it is even arguable that it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the children's best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2012)), including the children's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*. The focus of the best-interests hearing is the children, and the parent's interest in maintaining

the relationship must yield to the children's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004).

¶ 30 The court's finding here was not contrary to the manifest weight of the evidence. The court heard testimony from McMahon and the foster mother that the children are in a safe, secure, loving environment, their needs are met, they are involved in community activities, and they are affectionate with their foster parents. Further, the court heard testimony that the foster parents encourage ongoing relationships between the children and their extended family and that the foster parents are willing to adopt the children and provide them with a permanent home. None of this testimony was challenged. Finally, the court heard testimony that, due to his incarceration, respondent was not in a position to provide the children with a stable or safe home. We cannot conclude that it is even arguable that the court's finding that termination is in the children's best interests is contrary to the manifest weight of the evidence.

¶ 31 Accordingly, after examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 34 Affirmed.