2015 IL App (2d) 150520-U
No. 2-15-0520
Order filed **October 5, 2015**

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ABEL C., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 12-JA-60
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Shana C.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Motion for leave to withdraw as appointed counsel was allowed as respondent could not reasonably argue on appeal that trial court's findings on unfitness and best interests of minor were against the manifest weight of the evidence. Affirmed.

¶ 1 The trial court found respondent, Shana M., to be an unfit parent and determined that it was in the best interests of her minor child, Abel C., to terminate her parental rights. Respondent timely appealed, and attorney Tina Long Rippy was appointed appellate counsel.

¶ 2 Attorney Rippy now moves to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003). In her motion, counsel states that she reviewed the record, researched the applicable statutes and case law, and concluded that there are no meritorious issues of procedure or substance to be raised on appeal that would

warrant relief by this court. Counsel supports her motion with a memorandum of law providing a statement of facts and an argument why this appeal presents no issue of arguable merit. Counsel further states that she served respondent with a copy of the motion by certified mail at her last known address and informed her of the opportunity to present any additional matters to the court within 30 days. We advised respondent that she had 30 days to respond to the motion. The time is past, and respondent did not respond.

¶ 3 Counsel asserts that respondent cannot reasonably argue on appeal that the trial court's findings on unfitness and best interests of the minor are against the manifest weight of the evidence. We agree.

¶ 4 I. BACKGROUND

¶ 5 On February 17, 2012, DCFS took seven-day-old Abel into protective custody. The State thereafter filed a petition on February 22 alleging that Abel was a neglected minor under section 2-3(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(b) (West 2010)), as his environment was injurious to his welfare, placing Abel at risk of harm, in that: (1) his siblings had been removed from respondent's care and she had failed to cure the conditions that caused their removal; (2) his siblings had been removed from the care of Javier C., their father and Abel's putative father, and he had failed to cure the conditions that caused their removal; and (3) Javier was an untreated sex offender. After an adjudication hearing, the trial court found that Abel was a neglected minor and, on February 27, 2013, entered an order that it was in Abel's best interests to be made a ward of the court.

¶ 6 We affirmed the trial court's decision on appeal (*In re Abel C.*, 2013 IL App (2d) 130263), concluding that the following trial court findings were not against the manifest weight

of the evidence. When Abel was brought into DCFS care, respondent "had not cured the conditions that brought his older siblings into care," namely, domestic violence between

¶ 7 respondent and Javier. *Abel C.*, 2013 IL App (2d) 130263, ¶ 27. While respondent "did engage in some services, she either did not complete the service or was discharged from the service"; nor did she successfully complete the services asked of her as a result of the siblings' cases. *Id*. The record also showed that respondent "blamed everyone except herself for her failures." *Id*.

¶ 8 Permanency reviews were conducted in August 2013, February 2014 and May 2014. Respondent elected to represent herself at the reviews. At the first permanency review, the trial court admonished respondent that if she failed to make reasonable efforts and progress during the first nine months, the State may file a petition to terminate her parental rights. Over the course of the reviews, the court found that respondent had made reasonable efforts but had not made reasonable progress toward the goal of return home. After hearing and considering all the evidence presented by the parties at the third permanency review, the court found that it was in Abel's best interests to change the goal to substitute care pending court determination of termination of parental rights.

¶ 9 On November 10, 2014, the State filed its Motion to Terminate Parental Rights, and hearings on unfitness and best interests of a minor were held in April and May of 2015. On May 8, 2015, the trial court found respondent unfit, determining that she had failed to make reasonable progress toward the goal of reunification in the time period following the adjudication of neglect on December 13, 2012, and further found that it was in Abel's best interest to terminate respondent's parental rights. Respondent was represented by an attorney at both hearings.

¶ 10 II. ANALYSIS

¶ 11 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.,* 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 12 A. Unfitness

¶ 13 It is only necessary that the State prove by clear and convincing evidence one statutory factor of unfitness for the termination of parental rights to ensue. *In re A.S.B.,* 293 Ill. App. 3d 836, 843 (1997). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.,* 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.,* 326 Ill. App. 3d 262, 270 (2001).

¶ 14 Section 1(D)(m) of the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)) provides that a finding of unfitness may rest on the failure by a parent to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or to make reasonable progress toward the return of the child to the parent within nine months after an adjudication of neglected minor. 750 ILCS 50/1(D)(m)(i)(ii) (West 2014). "Reasonable progress" includes the parent's failure to substantially fulfill his or her obligations under a service plan, if those services

were required and available, and to correct the conditions that brought the child into care during any nine-month period following the adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2014) (referencing section 8.2 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/8.2 (West 2014)).

¶ 15 Reasonable progress requires "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17.

¶ 16 At the unfitness hearing, the State presented the testimony of a clinical psychologist, Dr. Valerie Bouchard, who saw respondent in 2012 and 2014. In 2012, Dr. Bouchard administered a "battery of tests that included an extensive clinical interview as well as objective and subjective tests to determine overall functioning." She also conducted a review of respondent's records for the history and current status of the case, including any services, and reviewed counseling and therapy reports.

¶ 17 Dr. Bouchard arrived at a diagnosis of paranoid personality disorder, which she described as a pervasive disorder that "interferes with a person's ability to get along with others and care for them and interpret reality in a non-distorted way." It is very difficult for paranoid people to accept any contribution of their own to a situation, and it takes "a great deal of therapeutic effort" to treat pervasive paranoia. Dr. Bouchard noted respondent's defensiveness, hostility and depression and recommended that respondent get into treatment and be referred for psychiatric care to evaluate her need for medication to help with the symptoms. Dr. Bouchard also recommended that structured visitation be continued. She believed, given respondent's mental condition, Abel would be "at risk" if respondent were to parent him.

¶ 18 In 2014, after conducting a more in-depth clinical interview and administering tests, Dr. Bouchard found that respondent's paranoid "ideas had solidified so strongly that they had become delusional." Respondent initiated the interview with a list of "all the reasons that she had been persecuted in this case" and at one point raised her voice and began an agitated "rant," verbally attacking her brother, who had custody of "at least one" of Abel's siblings, and talking about "all the reasons why he would not be a person who should be raising her child." On cross-examination, Dr. Bouchard acknowledged that it was not unusual for a parent to become emotional when discussing the care or safety of her children, but respondent's particular behavior was "a potentially explosive kind of agitation."

¶ 19 Dr. Bouchard further testified that although respondent had gotten into treatment, her paranoid ideation prevented the therapist from establishing an effective therapy relationship with her, and she was eventually discharged due to an inability to effectively participate in therapy. Dr. Bouchard's diagnosis of respondent in 2014 included the presence of a delusional disorder and major depressive disorder, and she did not feel that respondent would be capable of parenting Abel at that time or that it was safe for him to be placed in her care.

¶ 20 The State also presented the testimony of a supervisor of foster care at Children's Home and Aide, Kim Welsh, whose agency had case management responsibility over Abel's case. Ms. Welsh was involved with the case since Abel began care. Ms. Welsh testified regarding the three service plans in effect following the adjudication of neglect. During the time period of the third service plan, April to December of 2014, Ms. Welsh was not able to work towards unsupervised visits or placement of Abel with respondent because respondent was not able to demonstrate the appropriate mental stability to have unsupervised contact with Abel. The issue during the supervised visits was not respondent's parenting skills, which were "okay," but, rather, her

outbursts in front of Abel towards the person supervising the visits. These inconsistent outbursts depended upon how respondent was feeling on a particular day. When an outburst occurred, the visit would be ended, and a discussion with respondent regarding the appropriateness of her behavior would immediately take place. Respondent was not amenable to receiving redirection or correction of her behavior. The additional concern remained that respondent never believed "throughout all of these years" that her older children had been abused or put at risk in any way, a contributing factor to the question of whether respondent had the ability make good judgments and decisions about what would be a safe situation for Abel.

¶ 21 Ms. Welsh further testified that although respondent had completed parenting education and domestic violence services, the main focus of the service plan was counseling and "really incorporating the ideas from therapy into her daily life." As for engaging in the individualized therapy recommended by the service plan, respondent reported that she was seeking her own counseling through Family Counseling Services after she had been unsuccessfully discharged from the agency counseling. However, no verification that respondent was in therapy was provided, and because respondent did not sign releases of information, Children's Home and Aid could not confirm that she was in therapy.

¶ 22 Respondent testified on her own behalf, stating that after being unsuccessfully discharged from the agency counseling, she had continued therapy at Family Counseling Services and Rockford Psychiatric Services. She paid for the individual counseling "out of my own pocket" because she received no referrals from Children's Home and Aid. Respondent testified that she was discharged from agency counseling after her counselor told her she would not get Abel back unless she said her other children had been sexually abused and she refused to say that.

¶ 23 Respondent next saw a counselor at Family Services Center for about six months, first weekly, then bi-weekly. Her counselor told her that her supervising caseworker had been calling and requesting paper to be filled out. Although respondent signed a release form, it was never brought to her attention that the caseworker was not receiving documentation of her individual counseling. Respondent decided not to go back after the counselor told her not to have more children. Respondent was upset by this remark because she did not intend to have any more children and the comment seemed cruel to her. Respondent also testified that she saw someone at Rockford Psychiatric Medical Services in April 2015 and had been told to come back in a month.

¶ 24 Respondent denied raising her voice to case aides supervising her visitation with Abel, asserting repeatedly at the hearing with respect to incidents with both aides and caseworkers, "they started it on me, I've never started it on them." Respondent also denied calling Kim Welsh and being upset and raising her voice over the telephone; denied yelling at Abel's nurse during a doctor visit; and denied coming close to hitting her former caseworker with her car in the parking lot following that visit.

¶ 25 In rebuttal testimony, Kim Welsh offered detailed accounts of the incidents of aggressive behavior that respondent had denied. She also testified that referral for counseling ended after the unsuccessful discharge because Dr. Bouchard's psychological report indicated that no form of therapy would be beneficial, and that referrals for services in general ended because the agency was statutorily barred from paying for services to the parents when the goal changed to substitute care pending court determination of termination of parental rights.

¶ 26 At the close of evidence, the trial court found respondent unfit in that she had failed to make reasonable progress toward Abel's return within nine months after the adjudication of

neglected minor or within any nine months following the initial nine-month period. The trial court further found that the State had not proven unfitness for failure to make efforts or maintain a reasonable degree of interest, concern or responsibility. From our review of the record, we cannot say that the trial court's unfitness determination was against the manifest weight of the evidence.

¶ 27 The matter proceeded directly to a hearing on Abel's best interests.

¶ 28 B. Best Interests

¶ 29 The focus shifts to the child after a finding of parental unfitness, and "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). At the best interests hearing, the trial court considers:

> "(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 *** (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 2014).

We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 30 At the best interests hearing, the trial court heard testimony from the case manager at Children's Home and Aid who supervises Abel's parent-child visits and foster home; respondent; and Abel's foster mother and father. The evidence showed Abel has lived with his foster parents since he was two days old. He calls them "mommy" and "daddy" and seems uncertain as to the identity of respondent. The foster parents are committed to adopting Abel, and they offer a safe and stable home for him. Abel gets along well with the foster parents' two other adopted children and is involved in the extended family. The foster parents feel it is important that Abel also maintain contact with his biological siblings. They are aware that Abel is biracial and have made inquiries into learning different languages; most of the toys Abel plays with have multiple language capabilities.

¶ 31 Respondent was barred from attending doctor's appointments with Abel after the first appointment, when she had been aggressive and disruptive. The longest single block of time she spent with Abel during the course of this case was two hours. While her willingness to continue to work toward the goal of being able to take care of Abel is commendable, her interest in maintaining the parent-child relationship must yield to Abel's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d at 364. The court's determination that it was in Abel's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.