2016 IL App (2d) 160559-U
No. 2-16-0559
Order filed November 9, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ADAM B., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 15-JA-20
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Audra B.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw is granted, where there are no issues of arguable merit regarding the trial court's findings that respondent is unfit and it is in the minor's best interests for parental rights to be terminated. Affirmed.

¶ 2 In this case involving extreme neglect, the trial court found, on July 8, 2016, that the State had established by clear and convincing evidence that respondent, Audra B., is an unfit parent to her son, Adam B., and that it is in the child's best interests that respondent's parental rights be terminated. Respondent appeals.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See, *e.g.*, *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders*

applies to termination cases). The attorney states that she has read the record and has found no issues of arguable merit. Further, the attorney supports her motion with a memorandum of law, containing 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 she had 30 days to respond. That time is past, and she has not responded. For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue either that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of respondent's parental rights is not in Adam's best interests.

¶ 4 A trial court's unfitness and best interest findings will not be disturbed on review unless 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). See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). Here, the State's March 21, 2016, petition to terminate parental rights alleged that respondent was unfit on three bases in the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2014)), and the trial court found respondent unfit on all three: (1) failure to protect Adam from conditions within his environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2014)); (2) failure to make reasonable progress toward the return of Adam to her home during any nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(ii) (West 2014)); and (3) failure to maintain a reasonable degree of interest, concern, or responsibility as to Adam's welfare (750 ILCS 50/1(D)(b) (West 2014)). For purposes of evaluating whether there exists arguable merit to claims respondent could raise on appeal, we must bear in mind that any one ground, properly proved, is sufficient to affirm. *In re Janine M.A.*, 342 Ill. App. 3d at 1049. As such, we agree with counsel that there would be no

arguable merit to a challenge to the court's finding of unfitness because, at a minimum, the court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Adam's welfare is not contrary to the manifest weight of the evidence.

¶ 5 Here, the State filed a neglect petition for Adam, age four, on January 16, 2015, alleging that Adam was neglected in that he: (1) has developmental delays and was not receiving necessary medical care; and (2) was not receiving adequate food necessary for his well-being. 705 ILCS 405/2-3(1)(a) (West 2014). The court adjudicated Adam neglected and made him a ward of the court, granting guardianship and custody to the Department of Children and Family Services (DCFS).

¶ 6 Thereafter, respondent did not appear at the December 1, 2015, or February 8, 2016, permanency review hearings. The court learned that, on March 24, 2015, respondent commenced parent coaching, but she was unsuccessfully discharged from the program in September 2015, and she had made minimal progress toward performing age-appropriate activities with Adam. Respondent sporadically attended counseling, and the parenting coach and counselor both recommended that she submit to a psychiatric evaluation. On December 1, 2015, the court ordered that respondent participate in a psychiatric evaluation and found that respondent had not made reasonable efforts during the review period. The court later learned that, although respondent was to visit Adam for two hours each week, she had not visited him since November 24, 2015. In March 2016, the court learned that respondent had cancelled meetings with her caseworker, had not visited Adam, and had not attended doctor visits that were scheduled with her knowledge. On March 30, 2016, the court again found that respondent had not made reasonable efforts or progress and changed the goal to substitute care pending court determination of parental rights.

¶ 7 The foregoing information was put into evidence at the July 1, 2016, unfitness hearing. Further, the court learned that Adam, born prematurely, had been hospitalized for four months following his birth. He has several special medical needs, requiring services from neurologists, opthamalogists, and gasteroenterologists, as well as occupational, physical, and speech therapy, and early intervention and other school services. Adam had not received any medical or educational services for 2½ years prior to court intervention. Although respondent inquired about Adam's health and well being, she did not attend his medical appointments and disputed some of the courses of treatment. During the pendency of the case, respondent had not provided any support for Adam in the form of clothing, food, or shelter. The first time that respondent spoke with the caseworker was in April 2016. Respondent presented some medical evidence that she claimed prevented her from traveling to visit Adam; however, the court found that the evidence did not reflect that the medical conditions would have interfered with respondent's ability to visit.

¶ 8 Given the foregoing evidence and findings, we agree with counsel that an argument challenging the court's unfitness finding lacks arguable merit. Again, we must defer to the trial court and affirm if any *one* ground was proven by clear and convincing evidence. In that regard, any argument challenging unfitness would fail, given that the court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility for Adam's welfare was clearly not contrary to the manifest weight of the evidence.

¶ 9 We further note that, although counsel in her *Anders* motion did not address the court's finding that respondent failed to protect Adam from conditions in his environment injurious to his welfare, that finding was also clearly supported by the manifest weight of the evidence. The court received evidence that, when Adam, age *four*, was removed from respondent's care, he had

not been taken outside of his home in 2½ years. Adam had been kept in a baby bed in a bedroom, wearing a diaper and sucking a pacifier. He was fed baby food and could not feed himself. Adam could not drink out of a cup; he drank only from a bottle or respondent would spoon feed him. Adam was not toilet trained. He did not respond to an adult who entered the bedroom. He could not speak and only grunted when he wanted something. Adam was malnourished, was in the *less than one percentile* for both height and weight (.40% and .36%, respectively), and his teeth were in poor condition. According to medical professionals, Adam appeared about one year of age when he was four. Further, a doctor reported that she had never seen a child with those findings. Given the foregoing, there would be no arguable merit to an assertion that the court's finding that respondent was unfit was not based on the evidence or that the opposite conclusion is clearly apparent.

¶ 10 Similarly, we conclude that there is no arguable merit to a claim that it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the child'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 405/1-3(4.05) (West 2014)), including the child's physical safety and welfare, including food and health; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*.

¶ 11 Here, the trial court took judicial notice of the evidence and testimony from the unfitness portion of the hearing, as well as a letter and photographs from Adam's foster family. The court heard evidence that Adam lives in a traditional foster home with a foster father and mother, their biological daughter, and another foster child. The DCFS caseworker visited Adam in the foster

home twice monthly and observed that Adam's interactions with the family were warm and loving. He sought them out for comfort and soothing. When Adam is distressed at doctor's appointments, the foster parents get down to his level, talk to him, and sing to him. Adam is responsive to their interactions. The home is stable, clean, and free of safety concerns. Adam is attending preschool and is forming good relationships with classmates and teachers. The foster parents attend all school meetings and meet Adam's significant medical special needs, including his multiple appointments and surgeries. The caseworker had never heard Adam state that he missed respondent or wanted to return to her care and, in her opinion, any bond between Adam and his mother was broken when visitation ceased in November 2015. Adam was bonded with his foster parents, and they are willing to adopt him.

¶ 12 Given the foregoing, the court's finding that it is in Adam's best interests for respondent's parental rights to be terminated so that he could live with and be adopted by his foster parents is not contrary to the manifest weight of the evidence.

¶ 13 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issues of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 14 Affirmed.