2017 IL App (2d) 160595-U
No. 2-16-0595
Order filed April 25, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re SAPPHIRE M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-118
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Shardasia B., Respondent-Appellant, and Christopher M., Respondent.)	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

In re AMETHYST M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JA-279
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Shardasia B., Respondent-Appellant, and Christopher M., Respondent.)	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), was granted, and the trial court's order terminating respondent's parental rights was affirmed, where an examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Shardasia B., to be an unfit parent and determined that it was in the best interest of her minor daughters, Sapphire M. and Amethyst M., to terminate her parental rights. Respondent appealed, and the trial court appointed counsel on her behalf. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967).

¶ 3 In his motion, counsel states that, after thoroughly reviewing the record, there are no meritorious issues to be raised on appeal. Counsel submitted a memorandum of law outlining proposed issues that he determined lack merit. He further states that he served respondent with a copy of the motion by regular and certified mail at respondent's last known address and informed respondent of her opportunity to present additional material to this court within 30 days. This court also advised respondent that she had 30 days to respond to the motion, which she failed to do. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Rather than provide a detailed recitation of the facts here, we will briefly outline the procedural background and address the relevant facts in the analysis section below.

¶ 6 On March 25, 2013, the State filed a neglect petition with respect to Sapphire. On March 27, 2013, the State filed an amended neglect petition. Respondent waived her right to a shelter care hearing and consented to temporary guardianship and custody being placed with the Department of Children and Family Services (DCFS). On August 28, 2013, respondent stipulated that Sapphire was neglected based on an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The factual basis for the stipulation was that the father, Christopher M.,[1] was previously indicated by

[1] The father was also named as a respondent to these proceedings, but he signed specific

DCFS as a sex offender, and respondent left Sapphire with the father without adequate supervision, in violation of an established safety plan. The court thus adjudicated Sapphire neglected. Following the dispositional hearing on October 24, 2013, the court made Sapphire a ward of the court and continued guardianship and custody with DCFS.

¶ 7 Amethyst was born on August 1, 2014. On August 6, 2014, the State filed a neglect petition with respect to Amethyst. Respondent again waived her right to a shelter care hearing and consented to temporary guardianship and custody being placed with DCFS. On November 6, 2014, respondent stipulated that Amethyst was neglected based on an injurious environment pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)). The factual basis for that stipulation was that Amethyst's sibling, Sapphire, was removed from the father's care due to neglect, and the father had failed to cure the conditions which caused the removal of Sapphire. After a dispositional hearing on February 26, 2015, the court made Amethyst a ward of the court and continued guardianship and custody with DCFS.

¶ 8 On March 2, 2016, the State filed petitions to terminate respondent's parental rights with respect to Sapphire and Amethyst. Following an unfitness hearing on May 26, 2016, the court found that the State proved by clear and convincing evidence that respondent was an unfit parent. Specifically, the court found that respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable progress toward the return of the minors within two separate nine-month periods after the adjudications of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (3) protect Sapphire from an environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2014)). Following a best interest hearing, the court found that it was in

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consents to adoption during the pendency the proceedings. He is not a party to this appeal.

Sapphire and Amethyst's best interest that respondent's parental rights be terminated. Accordingly, the court terminated respondent's parental rights and granted DCFS the power to consent to adoption.

¶ 9 Respondent timely appealed, and the court appointed appellate counsel.

¶ 10 II. ANALYSIS

¶ 11 Before we discuss the substance of counsel's motion to withdraw, we address the timeliness of our decision. This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to Rule 311(a)(5), we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Respondent filed her notice of appeal on July 25, 2016, making the deadline to issue our decision December 22, 2016. Counsel initially filed two prior motions to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), claiming that there were no non-frivolous issues to be raised on appeal. We denied both of counsel's motions without prejudice, requiring additional evidentiary detail and further argument supported by applicable authority. Almost a month after counsel's submission of a third motion to withdraw, respondent notified this court of her new address. Therefore, on this court's own motion, we continued the matter for another 30 days to give respondent the opportunity to respond to counsel's motion to withdraw, which she failed to do. Because this case was not ready for disposition until March 29, 2017, we find good cause for issuing our decision after the 150-day deadline.

¶ 12 Turning to the merits, the termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *C.W.*, 199 Ill. 2d at 210. If the trial court finds that a parent is unfit, the

matter proceeds to a second hearing at which the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Because the trial court is in the best position to make credibility assessments and weigh the evidence, we will not overturn the findings made by a trial court at a termination hearing unless they are against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶¶ 65, 66. A trial court's decision is against the manifest weight of the evidence only where the opposite result is clearly evident from a review of the record. *Julian K.*, 2012 IL App (1st) 112841, ¶ 66.

¶ 13 A. Unfitness

¶ 14 In his motion to withdraw, counsel maintains that respondent is unable to raise an issue of arguable merit to support an appeal from the trial court's finding of unfitness.

¶ 15 In the petitions to terminate parental rights, the State alleged, among other things, that respondent was unfit because she failed to make reasonable progress toward the return of Sapphire and Amethyst within two separate nine-month periods following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2014). Specifically, the State alleged that respondent failed to make reasonable progress between: (1) November 16, 2014, and August 16, 2015; and (2) May 17, 2015, and February 17, 2016.

¶ 16 Reasonable progress toward the return of the minor to the parent is judged by an objective standard. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. It is measured from the conditions that existed at the time custody was taken from the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. The standard for measuring progress is to consider the parent's compliance with service plans and

court directives in light of the conditions that led to the minor's removal, as well as subsequent conditions that would prevent the court from returning the minor to the custody of the parent. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. Ultimately, reasonable progress exists when the court can conclude that it will be able to order the minor returned to the parent in the near future. *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21.

¶ 17 Here, respondent's service plan required her to participate in and complete a parental capacity assessment, domestic violence classes, and individual counseling. She was also required to maintain contact with DCFS, obtain and maintain employment, provide safe and adequate housing, and engage in consistent visitation with her children.

¶ 18 Phillip Goudreau, the case manager from Children's Home and Aid Society of Illinois (CHASI), testified at the unfitness hearing that the agency was unable to move toward the placement of the children with respondent during either nine-month period. Goudreau testified that respondent was inconsistent in visitation. He explained that, when visitation was supervised at respondent's apartment, respondent would not be present for the visits, despite workers transporting the children from their foster placement. As a result, visitation was changed back to supervised visits at CHASI. Goudreau testified that respondent failed to confirm visitation with the agency and failed to attend visitation consistently at the agency. He also testified that there were "significant periods of time" when respondent was not in communication with the agency. Specifically, there was a three-month period in which respondent did not contact the agency or visit with her children. The CHASI service plan reports that were admitted into evidence showed that respondent did not maintain contact with the agency or engage in visitation during the months of February, March, and April of 2015. Respondent also missed visits during June and July of 2015.

¶ 19 Goudreau further testified that, while respondent engaged in services "at different points of time in the case," she did not consistently engage in services during the relevant nine-month periods. Respondent engaged in domestic violence classes twice, but was unsuccessfully discharged for failure to attend. The CHASI service plan reports showed that respondent attended only one domestic violence class in February 2015 and then failed to attend the next two sessions; she was unsuccessfully discharged. Respondent was re-referred to domestic violence classes in August 2015. She attended those classes from August through December of 2015, but she stopped engaging in services in January 2016. Goudreau further testified that respondent did not consistently engage in individual counseling. For example, the January 2015 parenting capacity assessment indicated that respondent demonstrated a "lack of comprehension and judgment" and was unable to identify potential risks to her daughters. Respondent was thus referred to individual counseling at Clarity Counseling. The CHASI service plan reports showed that respondent told her caseworkers that she did not need individual counseling. CHASI re-referred respondent to Clarity for individual counseling, but she did not schedule any appointments.

¶ 20 The foregoing evidence establishes that respondent failed to make reasonable progress toward the return of Sapphire and Amethyst during either of the two nine-month periods alleged in the State's petitions. Respondent's failure to complete or progress in services prevented any demonstrable movement toward her children being returned to her care. Importantly, the parenting capacity assessment and a prior psychological evaluation concluded that respondent demonstrated a lack of comprehension and judgment, struggled to identify healthy relationships, and struggled to care for her children in a non-structured environment. Nevertheless, respondent told her caseworkers at CHASI that she did not need individual counseling, and she never

scheduled appointments when she was re-referred for individual counseling at Clarity. Also, in spite of the concerns about her relationship with Sapphire and Amethyst's father, who was previously indicated as a DCFS sex offender, respondent downplayed and minimized any potential risks to her daughters, as well as prior instances of domestic violence. Respondent was also unsuccessfully discharged from domestic violence classes twice. While respondent did maintain employment during the relevant nine-month periods, the CHASI service plan reports showed that respondent was living in an apartment without a lease or any written agreement, thereby undermining the stability of her living arrangements. Finally, respondent was inconsistent in visitation, failed to confirm visits with CHASI despite her children being transported to and from their foster home, and did not inquire into the wellbeing of her children when she did not see them. Respondent also went "significant periods of time" without contacting CHASI.

¶ 21 Thus, we agree with counsel that there is no issue of arguable merit with respect to the court's finding that respondent is an unfit parent pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). Because evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness, we need not address the remaining grounds of unfitness found by the trial court. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 39.

¶ 22 B. Best Interest

¶ 23 Counsel similarly maintains that respondent is unable to raise an issue of arguable merit to support an appeal from the trial court's finding that it was in Sapphire and Amethyst's best interest that respondent's parental rights be terminated.

¶ 24 Once a parent is found unfit, the focus shifts to the child, 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). The Act sets forth the factors to be considered whenever a best interest determination is required: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, which includes the need for stability and continuity of relationships; (8) the uniqueness of every family and child; (9) the risks attendant to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). Also relevant are the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would have upon the child's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 25 The best interest hearing proceeded on June 23, 2016. At the time of the hearing, Sapphire was three-and-a-half years old and Amethyst was almost two years old. Both lived in a traditional foster home with their foster mother, as well as their baby biological brother.[2] Amethyst was placed with the foster mother immediately after she was born in August 2014; Sapphire moved into the foster home in October 2014. Neither Sapphire nor Amethyst had any developmental or special medical needs. Goudreau testified that both Sapphire and Amethyst looked to the foster mother as their primary parental figure. The foster mother was affectionate

[2] Respondent gave birth to Samuel in November 2015. Samuel has a different father than Sapphire and Amethyst, and Samuel was not a subject of these same proceedings.

and loving toward both girls, and she provided for the children's daily needs. Both Sapphire and Amethyst were up to date on all of their medical immunizations.

¶ 26 Goudreau further testified that the children's relationship with respondent was "inconsistent." Specifically, Amethyst did not exhibit a "real strong bond" with respondent, due to respondent's inconsistent visitation and the fact that Amethyst had been placed in the foster home since birth. Sapphire had a "fairly significant amount of contact" with respondent, but respondent's inconsistent and "erratic" visitation upset and troubled Sapphire. Goudreau also testified that the foster mother was proactive in facilitating and maintaining Sapphire and Amethyst's relationships with their extended biological family, such as two maternal aunts. He further testified that the foster mother had included the children in her own extended family by taking them on family vacations and to other events, such as family reunions. Goudreau also testified that both Sapphire and Amethyst were strongly bonded to each other, to their younger brother, and to their foster mother. In Goudreau's opinion, it would be emotionally detrimental to remove the children from their foster placement. Goudreau further testified that he thought it was in Sapphire and Amethyst's best interest that respondent's parental rights be terminated and they be adopted by the foster mother.

¶ 27 Based on a careful review of the record, we agree with counsel that there is no issue of arguable merit with respect to the trial court's best interest findings. The evidence as a whole overwhelmingly established that it was in Sapphire and Amethyst's best interest to terminate respondent's parental rights. For nearly two years, the foster mother provided food, clothing, medical care, and safety to both children. She advocated for the children and showed an abundance of love and affection. Amethyst had been with the foster mother since she was born, and Sapphire had lived there since she was one-and-a-half years old. Moreover, the record

shows that both Sapphire and Amethyst are strongly bonded to the foster mother, as well as the foster mother's extended family. Specifically, the record shows that the children have a strong relationship with the foster grandparents and the foster aunt. The record also shows that Sapphire and Amethyst have a strong attachment to each other and to their younger brother Samuel; therefore, removing the children from their foster placement would be detrimental to their development and stability.

¶ 28 Accordingly, the trial court's finding that it was in Sapphire and Amethyst's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 29 C. Additional Issue

¶ 30 Counsel appears to raise one additional potential issue in his motion to withdraw. Counsel notes that the unfitness and best interest hearings proceeded in respondent's absence. Although he does not explicitly make the argument, counsel appears to suggest that respondent could argue that the trial court erred in denying her trial counsel's motions for a continuance. Nevertheless, counsel states that respondent had a duty to follow the progress of her case and to learn from her attorney the dates of any hearings. We agree with counsel that this issue lacks merit.

¶ 31 Due process requires adequate notice to a respondent-parent in a juvenile proceeding. *In re C.L.T.*, 302 Ill. App. 3d 770, 778 (1999). "Although a parent has a right to be present at a hearing to terminate parental rights, presence is not mandatory, and the trial court is not obligated to delay the proceedings until the parent chooses to appear." *In re J.P.*, 316 Ill. App. 3d 652, 661 (2000). A party does not have an "absolute right" to a continuance, and the trial court's denial of a motion to continue will not be reversed on appeal absent an abuse of discretion. *In re M.R.*, 393 Ill. App. 3d 609, 619 (2009).

¶ 32 Here, respondent failed to appear at either the unfitness or best interest hearing. Her trial counsel moved to continue both hearings, but the trial court denied the motions. Trial counsel acknowledged that respondent had received notice of both proceedings. He also acknowledged that respondent had his contact information, but she did not contact him before either the unfitness or best interest hearings, despite counsel personally reaching out to her and reminding her of the court dates. Given these circumstances, we agree that the trial court did not abuse its discretion in denying respondent's motions for a continuance. See also *C.L.T.*, 302 Ill. App. 3d at 778 ("The mother had a duty to follow the progress of her case and to learn from her attorney the date of the next hearing.").

¶ 33 III. CONCLUSION

¶ 34 After examining the record, counsel's motion to withdraw, and counsel's memorandum of law in support of his motion to withdraw, we hold that this appeal presents no issue of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County finding respondent unfit and terminating her parental rights to Sapphire and Amethyst.

¶ 35 Affirmed.