2017 IL App (2d) 161021-U
No. 2-16-1021
Order filed March 29, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re N.W.C. and E.W.C., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 15-JA-90
	)	15-JA-91
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Jourdan W., Respondent-	)	Mary Linn Green,
Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), would be allowed and the judgment of the circuit court terminating respondent's parental rights would be affirmed, where a review of the record revealed no issues of arguable merit to support an appeal from the judgment.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Jourdan W., is the mother to two minors, E.W.C. (born December 29, 2009) and N.W.C. (born July 11, 2013).[1] On November 17, 2016, the circuit court of Winnebago County found respondent to be an unfit parent with respect to both minors. Subsequently, the

[1] On the court's own motion, we will use initials to refer to the minors.

court concluded that the termination of respondent's parental rights was in the minors' best interest. Respondent then filed a notice of appeal.

¶ 4 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), appellate counsel has filed a motion for leave to withdraw.[2] Counsel avers that he has reviewed the record in detail, but is unable to identify any non-frivolous issues on appeal which would warrant relief by this court. Counsel has submitted a memorandum suggesting two potential issues with an explanation why these issues lack merit. Counsel further avers that he has served respondent with a copy of his motion and memorandum via regular and certified mail. The clerk of this court has also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, and respondent has not presented anything to this court.

¶ 5 The Juvenile Court Act of 1987 sets forth a bifurcated procedure for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014). Under this procedure, the State must make a threshold showing of parental unfitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). If a court finds a parent unfit, the State must then show that termination of parental rights would serve the minor's best interest. See *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. In his memorandum, appellate counsel presents two main issues: (1) whether the trial court's finding that respondent is an unfit parent is against the manifest weight of the evidence and (2) whether the trial court's finding that it is in the minors' best interest that respondent's parental rights be terminated is

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

against the manifest weight of the evidence. Counsel discusses the evidence in the record and explains why he believes these issues lack merit. We have reviewed the record, and, for the reasons that follow, we grant appellate counsel's motion to withdraw and affirm the judgment of the circuit court.

¶ 6 II. BACKGROUND

¶ 7 On March 3, 2015, the Illinois Department of Children and Family Services (DCFS) received a hotline call regarding the minors. The caller alleged that the Rockford police department had received a report of domestic battery during the early morning hours of March 3, 2015, involving respondent and Ryan C., respondent's husband and the minors' father.[3] Respondent recounted that Ryan came home drunk, accused her of cheating on him, grabbed her by the hair, punched her, and kicked her. Ryan then demanded that respondent have sex with him. Respondent submitted to Ryan's demand to keep him from hitting and kicking her. The minors were home during this incident. At 8 a.m., respondent left the home without the minors, stopping at a relative's home before going to a hospital. Ryan was later arrested.

¶ 8 Respondent was interviewed later that day by two child protection investigators with DCFS. At that time, respondent reported a history of domestic violence between her and Ryan. She also explained what happened earlier in the day. Respondent denied using any illegal drugs or drinking. E.W.C. was also interviewed by the investigators. He told them that he had seen his parents fight a few times. With respect to the encounter on March 3, E.W.C. stated that Ryan hit respondent "everywhere on her body and pulled her hair." E.W.C. also stated that Ryan threatened respondent with a knife. E.W.C. reported that Ryan was drinking "blue beer," and he showed the investigators where the beer was located. E.W.C. also told the investigators that

[3] The status of Ryan C.'s parental rights is the subject of a separate appeal.

Ryan rolls cigarettes, weighs them, and gives them to his friends. E.W.C. indicated where Ryan kept the cigarette supplies. One of the investigators opened an upper cabinet in the kitchen. E.W.C. then stood on a chair and pulled out two bags of marijuana. E.W.C. also related that when he gets in trouble, Ryan hits him on the "butt" "really, really hard."

¶ 9 A safety plan was implemented pursuant to which the minors were placed in relative foster care with their maternal grandmother. Respondent was instructed to complete a drug screen and assessment, obtain an order of protection against Ryan, and participate in domestic violence classes. Respondent did not complete the drug screen as requested. On March 10, 2015, respondent was summoned to the foster home by the investigators. At that time, respondent had a very strong odor of marijuana. Respondent admitted that she smokes marijuana almost daily and that Ryan would provide the substance to her, although she denied knowledge that Ryan was selling it. Respondent also told the investigators that she frequently left the minors with Ryan when she went to work and that the minors were with him on March 3, 2015, the day she was beaten. Respondent did not understand why she should not leave the minors with Ryan despite acknowledging that he would use cocaine, pills, marijuana, and "anything he could get his hands on." Respondent assured the investigators that she would come to the DCFS office to fill out consents for a substance-abuse assessment and to complete a drop. However, respondent never showed up. On March 13, 2015, respondent told a DCFS representative that she would attend a drug screen that day. Again, respondent did not cooperate. Protective custody of the minors was taken on March 18, 2015.

¶ 10 On May 14, 2015, respondent stipulated to count IV of each of the five-count neglect petitions filed on each minors' behalf. Count IV of the petitions alleged that the minors were subjected to an injurious environment in that respondent has a substance-abuse issue that

prevents her from properly parenting, thereby placing the minors at risk of harm. See 705 ILCS 405/2-3(1)(b) (West 2014). The remaining counts of the neglect petition pertaining to respondent alleged an injurious environment based on domestic violence. See 705 ILCS 405/2-3(1)(b) (West 2014)). The State agreed to dismiss those counts with the understanding that services would be required for all counts. A service plan was then developed for the family. The service plan listed various tasks for respondent, including substance-abuse treatment, parenting-education classes, individual counseling, and a domestic-violence assessment. Respondent was also tasked with visiting the children consistently, providing a safe environment for the children, obtaining stable employment, and cooperating with DCFS.

¶ 11 Permanency-review hearings were held on December 14, 2015, and June 28, 2016. At the first hearing, the court found that respondent failed to make reasonable efforts during the review period, but it deferred addressing the issue of reasonable progress. However, following the second hearing, the court found that respondent did not make reasonable efforts or progress. As a result, the court changed the permanency goal from return home to substitute care pending court determination of termination of parental rights.

¶ 12 On July 20, 2016, the State filed separate motions to terminate respondent's parental rights with respect to each minor. Each motion alleged that respondent was unfit on four grounds: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to protect the minor from conditions within the environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2014)); (3) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from her within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (4) failure to make reasonable

progress toward the return of the minor to her within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2014)). With respect to the last two grounds, the State listed the following nine-month periods: (1) May 14, 2015, through February 14, 2016; and (2) September 26, 2015, through June 26, 2016. The hearing on unfitness commenced on September 9, 2016, and concluded on October 5, 2016. The trial court found respondent unfit on all four grounds alleged in the motion. Following a hearing on November 17, 2016, the court concluded that it was in the minors' best interest that respondent's parental rights be terminated. Thereafter, respondent initiated the present appeal.

¶ 13 III. ANALYSIS

¶ 14 A. Unfitness

¶ 15 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) lists various grounds under which a parent may be found unfit. *Antwan L.*, 368 Ill. App. 3d at 1123. As the grounds for finding unfitness are independent, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2014); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. As such, a trial court's determination of a parent's unfitness will not be reversed unless it is against the manifest weight of the evidence. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A decision is against the manifest weight of the evidence "if a review of the record 'clearly demonstrates that the proper result is the one opposite that reached by the trial court.' " *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 16 As noted above, the State alleged four grounds of unfitness in its motions for termination of parental rights. In the memorandum of law appellate counsel filed in support of his motion to withdraw, he focuses on the ground that respondent failed to make reasonable progress toward the return of the minors to her within either of the two nine-month periods alleged in the State's motions. After reviewing the record, we agree with counsel that there would be no arguable merit to a challenge to the trial court's finding of unfitness because, at a minimum, the court's conclusion that respondent failed to make reasonable progress toward the return of the minors to her during the nine-month periods from May 14, 2015, through February 14, 2016, and September 26, 2015, through June 26, 2016, is not against the manifest weight of the evidence.

¶ 17 Under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), a parent is unfit where he or she fails to make reasonable progress toward the return of a child to him or her during any nine-month period following the adjudication of abuse or neglect. When proceeding on an allegation under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)), the State is required to give notice to the parent of the nine-month periods it intends to rely on at trial. 750 ILCS 50/1(D)(m) (West 2014). The court may only consider evidence of the parent's conduct during the relevant nine-month time period identified by the State. *In re R.L.,* 352 Ill. App. 3d 985, 999 (2004). In the context of section 1(D)(m)(ii), "reasonable progress" means "demonstrable movement toward the goal of reunification." *In re C.N.,* 196 Ill. 2d 181, 211 (2001). "[T]he benchmark for measuring a parent's 'progress toward the return of the child' * * * encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent." *C.N.,* 196 Ill. 2d at 216-17. The question of reasonable

progress is an objective one, which requires the court to consider whether the parent's actions reflect that the court will be able to return the child home in the near future. *In Re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 18 Here, the principal conditions which gave rise to removal of the minors involved domestic violence and substance abuse. To address these issues, the service plans recommended various tasks for respondent, including substance-abuse treatment, parenting-education classes, individual counseling, and a domestic-violence assessment. Respondent was also tasked with providing safe and stable housing for the minors. At the unfitness hearing, caseworker Catherine Dreska testified that during the nine-month periods identified in the motions to terminate respondent's parental rights, she was unable to place the minors with respondent, increase the frequency of visits, or authorize unsupervised visitation because respondent was not making progress in her services. In this regard, respondent's service plans, which were admitted at the unfitness hearing, reflect that respondent participated in a substance-abuse assessment in June 2015 and was diagnosed with opioid dependence. In June 2015, while incarcerated, respondent began substance-abuse treatment. Following her release from prison, respondent continued treatment, although her attendance was inconsistent. However, in November 2015, respondent tested positive for cocaine. Respondent missed the next three drug drops scheduled for November 25, 2015, December 15, 2015, and January 27, 2016. A drug drop on February 11, 2016, was negative for all substances, but respondent missed a drop scheduled for February 17, 2016, and she missed several more drops through May 2016. Dreska noted that respondent was told on multiple occasions that missed drops are deemed positive. In addition, respondent did not provide the agency with documentation verifying attendance at her substance-abuse support group. Indeed, respondent acknowledged that her attendance at such meetings was sporadic.

¶ 19 Dreska also testified that respondent was also dishonest about her living arrangements. Respondent told Dreska that she was residing at an unspecified location in Stillman Valley, but she told her probation officer that she was still residing with her father. Dreska explained that it is important for the agency to know where respondent resides because she has to check the house to make sure it is safe for the children during any potential visits. In addition, the service plans reflect that although respondent participated in a domestic-violence assessment on August 28, 2015, she did not follow up with a recommendation that she attend a victim's group. In this regard, respondent attended only seven sessions between September 2015 and January 2016. As a result, she had to restart in February 2016. Further, respondent was scheduled to participate in individual counseling services. However, from September 2015 through January 2016, she attended only eight sessions, resulting in her unsuccessful discharge. The record also reflects that respondent was placed on probation on December 30, 2015, for burglary. Her probation was later revoked for failure to comply with the terms of the probation. Specifically, respondent failed to report to probation as required, she did not cooperate with treatment, and she failed to remain clean and sober. As a result, respondent was incarcerated for a short period.[4]

¶ 20 In short, the record does not establish that respondent had complied with the terms of her service plans such that the minors could be returned to her in the near future. Instead, the evidence shows that respondent did not comply with the tasks outlined in her service plans related to the conditions which gave rise to the removal of the minors. Significantly, she failed to remain drug free, consistently attend drug treatment or her substance-abuse support group, or cooperate with the requested drug drops. In addition, she did not cooperate with tasks intended

[4] Although respondent was released from jail, she was later re-incarcerated, and she was in jail at the time of the unfitness and best-interest phases of the proceedings.

to address her domestic-violence issues. In light of the foregoing, the court's finding that the State met its burden of establishing that no reasonable progress was made to returning the minors home during the nine-month periods identified in the motions to terminate respondent's parental rights was not against the manifest weight of the evidence. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068 (2004).

¶ 21 B. Best Interest

¶ 22 Having concluded that no meritorious argument could be made that the basis for the trial court's finding of unfitness is against the manifest weight of the evidence, we turn to the trial court's best-interest determination. As noted earlier, once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interest. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. As our supreme court has noted, at the best-interest phase, "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). Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a minor's best interest. These considerations include: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with parental figures; (5) the minor's wishes and goals; (6) community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interest of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like the unfitness

determination, we review the trial court's best-interest finding under the manifest-weight-of-the-evidence standard. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41.

¶ 23 In the present case, a best-interest hearing was held on November 17, 2016. At that hearing, the court heard evidence that the minors were placed in relative foster care with their maternal grandmother in March 2015. The foster mother's pre-teen daughter also lives in the home. The minors have developed a bond with the foster mother and her daughter. The minors go to the foster mother for affection and to have their needs met. Further, the home environment is safe and appropriate for the minors. Each minor has his own bed, and they have many toys. E.W.C., the older minor, is of school age. He is doing well in school, and the foster mother attends his parent-teacher meetings. Although E.W.C. had problems with his speech, those issues have been resolved. The foster mother is willing to provide a permanent home for the minors through adoption. In contrast, the court heard evidence that neither of the biological parents would be able to provide the minors a safe and stable home in the near future. Deska noted that the parents have not completed their requested services and that respondent is incarcerated.

¶ 24 In light of the foregoing, the court's finding that it is in the minors' best interest for respondent's parental rights to be terminated so that they can live with and be adopted by their maternal grandmother is not contrary to the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and the relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Therefore, we allow the motion of appellate counsel to withdraw from this appeal, and we affirm the judgment of the circuit

court of Winnebago County finding respondent unfit and terminating her parental rights to the minors.

¶ 27 Affirmed.