2023 IL App (4th) 221117-U

NOS. 4-22-1117, 4-22-1118, 4-22-1119 cons.

FILED
May 30, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| *In re* P.T., N.T. and S.T., Minors | ) | Appeal from the |
| (The People of the State of Illinois, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Tazewell County |
| v. | ) | Nos. 19JA337 |
| Delores B., | ) | 21JA182 |
| Respondent-Appellant). | ) | 21JA183 |
| | ) | |
| | ) | Honorable |
| | ) | David A. Brown, |
| | ) | Judge Presiding. |

JUSTICE DOHERTY delivered the judgment of the court.
Justices Harris and Lannerd concurred in the judgment.

**ORDER**

¶ 1 *Held*: Finding no issues of potential merit to support an appeal on the trial court's termination of parental rights, appointed counsel's motion to withdraw is granted and the trial court's judgment is affirmed.

¶ 2 Respondent Delores B. appeals from the trial court's judgment terminating her parental rights to her three minor children, P.T. (born in 2019), N.T., and S.T. (twins born in 2021). Counsel appointed to represent respondent on appeal now moves to withdraw, arguing respondent's appeal presents no issues of arguable merit for review. We agree, grant appellate counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Case Opening

¶ 5 On December 17, 2019, the State filed a petition for adjudication of wardship in Tazewell County case No. 19-JA-337 regarding P.T. and her half-sibling, who is not part of this appeal. The petition alleged P.T.'s environment was injurious to her welfare in that P.T.'s umbilical cord tested positive for methamphetamine and amphetamine (count I). Count II alleged, *inter alia*, respondent (1) "admitted to taking Adderall, believing it was ibuprofen," (2) "has 6 additional minors all of which [respondent] does not have custody of," and (3) had previous indicated findings for substance misuse, failure to thrive, medical neglect, and environmental neglect. At a shelter care hearing held that same day, the trial court determined probable cause existed to believe P.T. was neglected, and it placed temporary guardianship and custody of the minor with the Illinois Department of Children and Family Services (DCFS).

¶ 6 On February 19, 2021, respondent failed to appear at the adjudication hearing, and the trial court adjudicated P.T. neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)). At the dispositional hearing that same day, the court found respondent unfit, made P.T. a ward of the court, and granted continued guardianship and custody to DCFS.

¶ 7 On June 17, 2021, the State filed petitions for adjudication of wardship in Tazewell County case Nos. 21-JA-182 and 21-JA-183 regarding N.T. and S.T., who were born during the pendency of P.T.'s case. The petitions alleged the minors were in an environment injurious to their welfare in that respondent was previously found to be unfit in P.T.'s case and that respondent was not cooperating or completing required services. A shelter care hearing was held the following day, the trial court found there was probable cause to believe that N.T. and S.T. were neglected, and it ordered temporary guardianship and custody of the minors to be placed with DCFS.

¶ 8 At the November 4, 2021, adjudicatory hearing, the trial court found N.T. and S.T. neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2020)). The court specifically found respondent "to be in default." The court proceeded immediately to a dispositional hearing, where it found respondent unfit, made N.T. and S.T. wards of the court, and granted continued guardianship and custody to DCFS.

¶ 9 On February 17, 2022, the trial court changed P.T.'s permanency goal to substitute care pending termination of respondent's parental rights. At a March 28, 2022, permanency hearing the court found "[N.T. and S.T.'s cases] aren't return home cases. *** I'd ask the agency engage in contingent planning for permanency for the kids."

¶ 10 On June 15, 2022, the State filed petitions to terminate respondent's parental rights regarding P.T., N.T., and S.T. In P.T.'s case, the State alleged respondent failed to make reasonable progress toward the return of P.T. to her care during a nine-month period following the adjudication of neglect (June 28, 2021, to March 28, 2022) (750 ILCS 50/1(D)(m)(ii) (West 2020)). Regarding N.T. and S.T., the petitions alleged respondent was unfit in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to each minor's welfare (750 ILCS 50/1(D)(b) (West 2020)). Corrected petitions for termination of parental rights were filed on July 25, 2022, to correct a scrivener's error.

¶ 11 B. Termination of Parental Rights

¶ 12 The trial court commenced a fitness hearing on November 23, 2022. When respondent failed to appear, the State requested she be defaulted. The court found, "Based upon the pleadings *** on file, including the petitions to terminate and the defaults of the parents, Court would find the State is able to meet and has met its burden of proof to demonstrate the material allegations in each of the counts by clear and convincing evidence."

¶ 13 The trial court proceeded immediately to a best interest hearing, at which point respondent appeared via Zoom. The best interest report, dated November 13, 2022, was admitted without objection. According to the authors of the best interest report, respondent was "court ordered to execute all authorizations for release of information requested by DCFS" as of November 13, 2022, but respondent had not signed a release of information. Moreover, respondent failed to (1) complete a drug and alcohol assessment, (2) complete drug drops, (3) participate in counseling, (4) complete a parenting course, (5) obtain and maintain stable employment, (6) obtain and maintain stable housing, and (7) visit with the minors. The report noted respondent "had not cooperated with the agency throughout the life of the case." According to the authors of the report, the minors did not "have a relationship" with respondent, noting respondent's lack of participation in the respective cases.

¶ 14 The State presented the testimony of Selena Bradshaw, the children's caseworker. Bradshaw testified she had been P.T.'s caseworker since May 2021 and N.T. and S.T.'s caseworker since their birth. Bradshaw indicated P.T. was bonded to her foster parents, and that the foster parents provided P.T. with emotional support, food, shelter, and all of her medical needs. The foster parents were willing to provide permanence for P.T. through adoption. Regarding N.T. and S.T., Bradshaw stated they were well bonded to their foster parents, and, "They look to [the foster parents] as mom and dad." The foster parents provided for all of N.T. and S.T.'s emotional, physical, and medical needs, and they were willing to provide permanency for N.T. and S.T. through adoption. Bradshaw testified she "attempted repeatedly" to contact respondent throughout the life of the case. Regarding visitation, Bradshaw indicated respondent had not visited P.T. since 2020 and had not visited with N.T. and S.T. "since they were born."

¶ 15 Following arguments, the trial court found termination of respondent's parental rights was in the minors' best interest. In addressing the best interest factors, the court stated it "would find all of those factors weigh heavily in favor of terminating the parental rights of [respondent]" and "none weigh against termination." The court noted P.T. had been in substitute care for "approximately three years," which was "virtually all of [P.T.'s] life except for one month." Further, N.T. and S.T. "have been in care their entire lives," and ultimately the minors deserved permanency.

¶ 16 On December 28, 2022, respondent filed a motion for leave to file a late notice of appeal, which we granted. This court docketed respondent's appeals in Tazewell County case No. 19-JA-337 as appellate court case No. 4-22-1117 (P.T.'s case), Tazewell County case No. 21-JA-182 as appellate court case No. 4-22-1118 (N.T.'s case), and Tazewell County case No. 21-JA-183 as appellate court case No. 4-22-1119 (S.T.'s case). In January 2023, this court granted respondent's motion to consolidate the appeals.

¶ 17 II. ANALYSIS

¶ 18 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appointed counsel moves to withdraw as counsel. Appellate counsel states in his motion that he has read the record and found no issue of arguable merit. Counsel lists two potential issues for review: (1) whether the trial court's determination that respondent was unfit was against the manifest weight of the evidence and (2) whether the trial court's determination that termination of respondent's parental rights was in the best interest of the minor children was against the manifest weight of the evidence. Proper notice of the motion to withdraw was provided to respondent. No response was filed. Because we agree with appellate counsel that this appeal presents no issues of potential merit, we grant the motion to withdraw and affirm the trial court's judgment.

¶ 19 A. Unfitness Findings

¶ 20 We initially note respondent was defaulted during the unfitness proceeding. As such, respondent admitted these allegations. See *Pekin Insurance Co. v. Campbell*, 2015 IL App (4th) 140955, ¶ 38 ("A default admits the facts alleged against a defendant in the complaint to be true."). The parties waived a factual basis for the unfitness finding. We recognize there are instances where a trial court enters a default judgment and requires that the State prove the allegations in the petition to terminate parental rights. See *In re B.C.*, 317 Ill. App. 3d 607, 609 (2000); *In re C.L.T.*, 302 Ill. App. 3d 770, 776 (1999). We certainly think it is the best practice to require the State to prove the allegations in a petition to terminate parental rights. However, because section 2-1301(d) of the Code of Civil Procedure (735 ILCS 5/2-1301(d) (West 2020)) uses discretionary language regarding the entry of default judgments, the State was not required to prove-up its fitness allegations. See 735 ILCS 5/2-1301(d) (West 2020) ("Judgment by default may be entered for want of an appearance, or for failure to plead, but the court may in either case, require proof of the allegations of the pleadings upon which relief is sought."). Therefore, we agree with appellate counsel that no meritorious argument can be made challenging the court's unfitness determination.

¶ 21 B. Best Interest Findings

¶ 22 Appellate counsel next asserts he can make no meritorious argument the trial court's best interest findings were against the manifest weight of the evidence.

¶ 23 When a trial court finds a parent to be unfit, "the court then determines whether it is in the best interests of the minor that parental rights be terminated." *In re D.T.*, 212 Ill. 2d 347, 352 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* at 364. The State

must prove by a preponderance of the evidence that termination of parental rights is in the minors' best interest. *Id.* at 366. In making the best interest determination, the 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 2020). These factors include:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 24 "The court's best interest determination [need not] contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Additionally, a trial court "may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being." See *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004). On review, "[w]e will not disturb a court's finding that termination is in the children's best interest unless it was against the manifest weight of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 25 Here, the trial court's best interest finding was not against the manifest weight of the evidence. The best interest report showed the children were thriving in their respective placements. P.T. was bonded with her foster parents and referred to them as "mom" and "dad." The report indicated P.T.'s physical, emotional, and medical needs were being met. The foster parents were willing to provide permanency for P.T. through adoption. According to the authors of the best interest report, P.T. did "not have a relationship with her biological parents," noting respondent had not visited with P.T. since 2020.

¶ 26 Regarding N.T. and S.T., the report indicated they had a very strong bond with their foster parents. Additionally, the foster parents were willing to provide permanency for N.T. and S.T. through adoption. N.T. and S.T.'s physical, emotional, and medical needs were being met in their foster placement. According to the report, respondent had not visited N.T. or S.T. "since [they were] born." The report further noted respondent failed to cooperate with the agency "throughout the life of the case." Indeed, respondent failed to engage in any services or execute any authorizations for the release of information throughout the pendency of the proceedings. The trial court found, "none [of the factors] weigh against termination," adding P.T. had been in foster care "virtually all of [her] life except for one month." Moreover, S.T. and N.T. had been in foster care for "their entire lives." As such, the court determined the minors deserved permanency. Based on this record, we conclude the court's determination that termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 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 appointed counsel's motion to withdraw and affirm the trial court's judgment.

¶ 29 Affirmed.