

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 231424-U

NO. 4-23-1424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 26, 2024

Carla Bender

4th District Appellate
Court, IL

<i>In re</i> T.P., a Minor)	Appeal from the
(The People of the State of Illinois,)	Circuit Court of
Petitioner-Appellee,)	Winnebago County
v.)	No. 23JA313
Gage N.,)	
Respondent-Appellant).)	Honorable
)	Erin B. Buhl,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate counsel's motion to withdraw is granted and the trial court's judgment, including the court's decision to remove respondent as both the guardian of the minor child at issue and as a party to the underlying neglect case, is affirmed.

¶ 2 Respondent, Gage N., the guardian of minor T.P. (born in March 2017), appeals from the trial court's dispositional order in a juvenile neglect case adjudicating T.P. a ward of the court, placing T.P. in the custody and guardianship of the Illinois Department of Children and Family Services (DCFS), and granting the State's request to remove respondent as a party to the case. On appeal, respondent's appellate counsel has filed a motion to withdraw, citing *Anders v. California*, 386 U.S. 738 (1967), and *In re S.M.*, 314 Ill. App. 3d 682, 732 N.E.2d 140 (2000), and asserting there are no meritorious issues for review. We grant appellate counsel's motion and affirm the court's judgment.

¶ 3

I. BACKGROUND

¶ 4

In August 2023, DCFS took protective custody of six-year-old T.P. following a report of alleged domestic violence at respondent's residence. At the time of the incident, T.P.'s biological mother was incarcerated and her biological father was deceased. Respondent, who the record indicates at one time had a dating relationship with T.P.'s mother, was T.P.'s guardian.

¶ 5

On August 10, 2023, the State filed a petition, alleging T.P. was a neglected minor and asking the trial court to adjudicate her a ward of the court. Specifically, it alleged T.P.'s environment was injurious to her welfare because (1) there was domestic violence in her home (count I) and (2) respondent committed acts of domestic violence (count II). The same day, the court entered a temporary custody order, placing T.P. in the temporary guardianship and custody of DCFS. The record reflects T.P. was placed in foster care with her maternal grandparents and that she also had a brother who resided in the home.

¶ 6

On November 1, 2023, the trial court conducted a hearing at which both T.P.'s mother and respondent stipulated to count I of the State's neglect petition. Pursuant to the agreement of the parties, count II was dismissed. As a factual basis for the stipulation, the State relied upon a statement of facts prepared by DCFS. The statement of facts showed that in August 2023, DCFS received a report about a verbal and physical altercation between respondent and a woman he lived with named Amanda, which occurred in T.P.'s presence. Amanda reported to the police that she and respondent got into an argument, during which respondent blocked her path when she tried to leave their residence, grabbed cell phones out of her hands and threw them, causing one to break, and "pushed her at least [three] times," causing her to fall and injure her knee. Amanda obtained an order of protection against respondent as a result of the incident.

¶ 7

A DCFS worker spoke with T.P., who reported that Amanda and respondent "got

into a fight” and respondent “used bad words.” T.P. stated respondent had “guns in the home in his room.” Further, she expressed that she wanted to stay with her grandparents and that she did not “feel very safe at her home with [respondent] and Amanda,” asserting the two “argued a lot.”

¶ 8 T.P.’s mother, who was incarcerated at the time of the incident, reported to DCFS that respondent “forced her” to give him temporary guardianship over T.P. She asserted that she had been in a relationship with respondent for six years and described him as both mentally and physically abusive. Both Amanda and T.P.’s mother also reported that respondent had a history of drug abuse.

¶ 9 The statement of facts noted that both T.P.’s mother and respondent had “an extensive history with” DCFS, although “all allegations [had] not been substantiated.” Additionally, it indicated that at the time of the underlying incident, respondent had pending criminal charges for aggravated battery, domestic battery, and unlawful restraint.

¶ 10 The trial court admonished respondent and T.P.’s mother regarding their right to a hearing and that they would be giving up that right by stipulating to count I of the State’s petition. Respondent indicated he understood the court’s admonishments, asked the court to accept his stipulation, and denied that he had been forced into making an agreement. The court accepted the parties’ stipulations as to count I of the neglect petition, finding both respondent and T.P.’s mother understood that they had a right to a hearing, that they were not required to enter a stipulation, and that they were entering a stipulation freely and voluntarily. The court entered a written order the same day, finding T.P. was a neglected minor as alleged in count I of the State’s petition.

¶ 11 Next, the parties agreed to proceed immediately with a dispositional hearing. At the State’s request and without objection, the trial court took judicial notice of a September 15, 2023, family service plan and an October 25, 2023, court report prepared by Lutheran Social Services of

Illinois (LSS). The report recounted the reason for DCFS's involvement with T.P., noting the verbal and physical altercation between respondent and Amanda in T.P.'s presence, that T.P. had "expressed feelings of insecurity and lack of safety in the presence [of respondent] and Amanda," reports from T.P.'s mother that respondent had "a history of violent behavior," and respondent's pending criminal charges.

¶ 12 The report stated respondent had been referred "for a [Partner Abuse Intervention Program] assessment" and that he was "receiving a Drug and Alcohol assessment." Additionally, respondent tested negative on drug drops that occurred in September and October 2023. However, he had failed to show up for a drop on October 6, 2023. Respondent also had weekly supervised visits with T.P., which were described as "appropriate." The report stated T.P. was receiving counseling services. At school, she had been observed engaging in self-harming behaviors. She was also "acting out verbally towards her brother," behavior that her foster parent stated "seem[ed] to have escalated since [T.P.] ha[d] seen her mother *** more often."

¶ 13 No further evidence was presented at the dispositional hearing. The State asked the trial court to find that both T.P.'s mother and respondent were unfit or unable to care for, protect, train, or discipline T.P. Additionally, it asserted that in the event the court found respondent was unfit or unable, the court should discharge him as a party and vacate his guardianship of T.P. The State asked the court to place T.P. in the custody and guardianship of DCFS. The guardian *ad litem* (GAL) stated she agreed with the State's position. She noted that although there was "some bond between" respondent and T.P., T.P. had expressed that she felt unsafe in respondent's home. Additionally, the GAL stated she had seen T.P. in her foster placement, and she asserted T.P. was safe, loved, and well cared for in that home.

¶ 14 Respondent's counsel asserted that respondent did not dispute that T.P.'s "current

placement [was] an appropriate placement” and “a good placement for [T.P.] at this point.” He maintained that all that respondent was asking for was “to remain a party to the case.” He asserted there was a bond between respondent and T.P. and that respondent was “the only father figure she ha[d] ever known.” Counsel further argued as follows:

“I would ask that the Court *** essentially make findings consistent with what the State is recommending: That guardianship and custody of the minor shall remain with DCFS and placement remain in effect. Simply ask that the Court decline to terminate [respondent’s] guardianship at this point and allow him to just be a participant at the discretion of DCFS, where they can make determinations about what is safe and what is in [T.P.’s] best interests.”

¶ 15 The trial court found both T.P.’s mother and respondent were unfit or unable to care for T.P. With respect to respondent, the court noted T.P. was taken into care as a result of a domestic violence issue in respondent’s home, as well as the fact that respondent had pending criminal charges. The court found it “evident *** that the issues of violence were not a one-time occurrence.” It also pointed out that T.P. had expressed fear with respect to living with respondent. The court terminated respondent’s guardianship of T.P. as a result of its finding that he was unfit, discharged him as a party to the case, and vacated the appointment of his attorney. The same day, the court entered its written dispositional order, finding respondent and T.P.’s mother were unfit or unable to care for, protect, train, or discipline T.P. and that it was in T.P.’s best interests to be removed from their custody. The court adjudicated T.P. a ward of the court and continued her in the custody and guardianship of DCFS.

¶ 16 This appeal followed.

¶ 17

II. ANALYSIS

¶ 18 As stated, on appeal, respondent’s counsel has filed a motion to withdraw, asserting “any request for review in this case would be wholly frivolous and patently without merit.” See *S.M.*, 314 Ill. App. 3d at 685 (stating the procedure for appellate counsel to withdraw as set forth in *Anders* applies on review of juvenile abuse and neglect cases). In particular, counsel argues that the trial court committed no error by removing respondent as T.P.’s guardian and discharging him from the neglect case. Counsel has attached a brief in support of that motion, and proof of service of the motion upon respondent has been shown. This court granted respondent leave to file a response to his counsel’s motion on or before February 16, 2024, but he has not responded. Following a review of the record, we agree with appellate counsel and find respondent’s appeal presents no meritorious issues for review.

¶ 19 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2022)) sets forth a two-step process for determining whether a minor should be made a ward of the court. *In re Z.L.*, 2021 IL 126931, ¶ 58, 190 N.E.3d 193. “Step one is the adjudicatory hearing on the petition for adjudication of wardship,” during which “ ‘the [trial] court shall first consider only the question whether the minor is abused, neglected or dependent.’ ” *Id.* ¶ 59 (quoting 705 ILCS 405/2-18(1) (West 2018)). A neglected minor includes any child under the age of 18 “whose environment is injurious to his or her welfare.” 705 ILCS 405/2-3(1)(b) (West 2022).

¶ 20 “The State has the burden to prove allegations of abuse or neglect by a preponderance of the evidence.” *Z.L.*, 2021 IL 126931, ¶ 61. The trial court’s finding of neglect will not be disturbed unless it is against the manifest weight of the evidence. *Id.* “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Id.*

¶ 21 “If the trial court determines that a minor is abused or neglected at the adjudicatory hearing, the court then moves to step two, which is the dispositional hearing.” *Id.* ¶ 60. At the

dispositional hearing, the court determines whether it is in the best interests of the minor and the public that the minor be made a ward of the court, as well as the proper disposition that best serves the health, safety, and interests of the minor and the public. 705 ILCS 405/2-22(1) (West 2022). Under the Act, the court may appoint DCFS as the minor's guardian after determining that the minor's parents or guardian "are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor *** and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of the minor's parents [or] guardian." 705 ILCS 405/2-27(1)(d) (West 2022); see *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). On review, we will reverse the court's dispositional decision "only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *J.W.*, 386 Ill. App. 3d at 856.

¶ 22 Additionally, the Act provides that "the necessary parties to [neglect] proceedings are the minor and 'his parents, guardian, legal custodian or responsible relative.' " *In re C.C.*, 2011 IL 111795, ¶ 38, 959 N.E.2d 53 (quoting 705 ILCS 405/1-5(1) (West 2010)). However, "once the court directs the removal or dismissal of a guardian, that individual no longer is a guardian." *Id.* ¶ 33. "[A] former guardian is not a guardian and, thus, no longer is a party respondent to the [neglect] proceedings *** and is no longer entitled to legal representation as provided for in the statute." *Id.*

¶ 23 In *C.C.*, the respondent was the legal guardian of her grandchildren. *Id.* ¶ 1. During neglect proceedings, the trial court entered a dispositional order, finding it was in the grandchildren's best interests that custody and guardianship be removed from the respondent and the minors' parents and placed with DCFS. *Id.* ¶ 23. The court then dismissed the respondent from

the case and discharged her counsel. *Id.* On review, the supreme court affirmed the court's judgment, stating that once the respondent was dismissed as the guardian of the minors, she was properly dismissed as a party in the neglect proceeding. *Id.* ¶ 54.

¶ 24 Here, respondent, as T.P.'s guardian, was initially named as a party respondent in the underlying neglect proceeding. He stipulated to count I of the State's neglect petition, agreeing that T.P. was a neglected minor because her environment was injurious to her welfare due to domestic violence in the home. The State's factual basis for the stipulation showed T.P. was taken into protective custody after she witnessed a verbal and physical altercation between respondent and the woman with whom he was living. As a result of that incident, the woman obtained an order of protection against respondent. Additionally, at the time the incident occurred, respondent had pending criminal charges for other violent offenses—aggravated battery, domestic battery, and unlawful restraint—and T.P. reported feeling unsafe in the home. Based upon these circumstances, the trial court determined T.P. was a neglected minor. We find no meritorious issue can be raised on appeal that the court's neglect determination was against the manifest weight of the evidence.

¶ 25 At the dispositional hearing, the trial court relied upon the same facts, presented through the LSS court report, to determine that (1) respondent was unfit and unable to care for, protect, train, or discipline T.P. and (2) removal from respondent's custody and guardianship was in T.P.'s best interests. Specifically, the court noted T.P. was taken into care as a result of domestic violence in respondent's home and that respondent had pending criminal charges for other similar offenses. The court concluded such circumstances indicated "issues of violence were not a one-time occurrence." It also noted T.P. had expressed fear with respect to living with respondent. Based upon these findings, the court ordered respondent discharged from the case.

¶ 26 The record reflects the trial court's factual findings were supported by the record

and that the supporting evidence was unchallenged by respondent. Additionally, respondent did not dispute that he was unfit or unable to care for T.P. or that removal from his care was in T.P.'s best interests. Although respondent's counsel asked the court not to terminate respondent's guardianship and allow him to remain "a participant" in the case, counsel also asked the court to make findings consistent with the State's recommendations, *i.e.*, continue custody and guardianship of T.P. with DCFS. Further, respondent acknowledged that T.P.'s placement by DCFS with her maternal grandparents was appropriate. Given these circumstances, we agree with appellate counsel that respondent can raise no meritorious argument that the court's factual findings were against the manifest weight of the evidence or that its dispositional order reflects an abuse of the court's discretion.

¶ 27 Moreover, under the Act, the trial court proceeded appropriately in dismissing respondent as a party to the neglect proceeding once it removed him as T.P.'s guardian. *Id.* Accordingly, respondent also can raise no meritorious issue that the court erred by discharging him as a party in the case and vacating the appointment of his counsel.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 30 Affirmed.