2022 IL App (2d) 210564-U
No. 2-21-0564
Order filed February 16, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.A., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 19-JA-138
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee v. Kelli C., Respondent- Appellant).	)	Francis Martinez,
	)	Judge, Presiding.

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

ORDER

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

¶ 2 Respondent, Kelli C., appeals from the trial court's orders finding her unfit to parent her son, J.A., and terminating her parental rights. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate counsel moves to withdraw. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies to termination cases). Counsel states that he has read the record and has found no issues of arguable merit. Further, counsel supports his motion with a memorandum of law providing 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. Further, we advised respondent that she had 30 days to respond and explain why (1) counsel's motion should not be granted; and (2) this court should not affirm the trial court's judgment. Respondent filed her response, and the issues are now ready for decision. For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue on appeal either that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of her parental rights was not in J.A.'s best interests.[1]

¶ 3 J.A. was born on April 2, 2019, and, shortly thereafter, the Department of Children and Family Services (DCFS) took him into protective custody at the hospital. Specifically, on April 5, 2019, DCFS filed a neglect petition, alleging that J.A. was neglected because he was in an injurious environment, as respondent had struck his sibling, DCFS had removed that sibling from the home, and where respondent had not cured the conditions that led to the sibling's removal.[2] On August 16, 2019, the court adjudicated J.A. abused and neglected.

[1] Respondent's notice of appeal was filed on September 24, 2021; however, various delays, including our dismissal of the appeal (and the December 1, 2021, reinstatement thereof), as well as our order granting respondent's motion for an extension of time to file the record, have necessarily taken us beyond the 150-day timeframe for issuing our decision under Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018). Under the circumstances of the present case, good cause for delay has been shown.

[2] We recently affirmed the court's judgment terminating the rights of J.A.'s father, Joe A. *In re J.A.*, 2022 IL App (2d) 210545-U. Further, we address separately respondent's appeal concerning the court's order terminating her parental rights to another child. *In re D.V.*, 2022 IL

¶ 4 On November 18, 2019, the court held a dispositional hearing. The court ordered respondent to cooperate with DCFS and to complete the services that DCFS recommended, which included drug, alcohol, and psychological treatment and services.[3]

¶ 5 At a permanency review hearing on July 15, 2020, the court found that respondent had not made reasonable efforts, and, at the review hearing on January 7, 2021, it found that respondent had not made reasonable efforts or progress. The court also found on January 7, 2021, that a goal change was appropriate. On March 18, 2021, the State petitioned to terminate respondent's parental rights.

¶ 6 After hearing evidence, the court, on August 9, 2021, found respondent unfit on the bases that she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to J.A.'s welfare (750 ILCS 50/1(D)(b) (West 2018)); (2) make reasonable efforts toward the return of J.A. to her during a nine-month period after the adjudication of neglect, specifically, for the periods August 16, 2019, to May 15, 2020, and April 8, 2020, to January 7, 2021 (*id.* § 1(D)(m)(i)); and (3) make reasonable progress toward the return of J.A. to her during a nine-month period after an adjudication of neglect, specifically, for the periods August 16, 2019, to May 15, 2020, and April 8, 2020, to January 7, 2021 (*id.* §1(D)(m)(ii)). In sum, the court noted that respondent had not completed services, including domestic violence counseling, mental health assessments and

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[3] We note that, at the hearing, the court also addressed two orders of protection filed by respondent and Joe against the father of one of respondent's other children. Not only did the court deny the petitions, but it also found respondent and Joe in direct criminal contempt for filing false pleadings and sentenced them to 10 days' confinement with credit for 5 days already served.

counseling, substance abuse counseling, and parenting classes. She had failed to complete or update various assessments and missed "numerous" drug drops, which prevented the court from finding that she had obtained sobriety. J.A. had never been in respondent's care for any length of time. The court found, "[p]er the testimony and the service plans that were admitted by the State, no service relative to rehabilitation was completed."

¶ 7 On September 8, 2021, the case proceeded to a best-interests hearing. The State called caseworker Jaimi Kitchen as its only witness. She testified that J.A., age 2½, is "very bonded" with his maternal grandmother, Karen, with whom he has been placed since September 2019. A maternal uncle also lives in the home, and J.A. "adores" him, too. Karen ensures that J.A. has contact with his extended family, including his two siblings, and she provides his necessities. Karen has a strong community support system of extended family and friends in her area. As J.A. has a speech delay, Karen ensures that he attends three or four weekly appointments to address those needs. He recently started therapy through Easter Seals. According to Kitchen, J.A. was diagnosed with an extra chromosome, and doctors are still assessing how that might impact him long term. Karen was willing to provide permanency for J.A. through adoption. Kitchen agreed that there exists a "strained" relationship between respondent and Karen and that there had not been much contact between them. Kitchen testified that J.A. has been in DCFS's care his entire life, and she believed that it was in J.A.'s best interests to terminate respondent's parental rights and obtain permanency through adoption.

¶ 8 Respondent testified that Karen is mentally unstable and made her leave home at age 14 or 15. She testified that Karen should not be trusted around children and barely raised her own children. She and Karen never formed a bond. According to respondent, Karen "has no reason to be playing my role with my children. She had hers already."

¶ 9 Joe similarly testified that Karen has some issues, but he agreed that he had never met her. He also testified that he had witnessed respondent visit with J.A. and that they are bonded.

¶ 10 In rebuttal, Kitchen testified that background checks were performed on Karen (and J.A.'s uncle in the household) prior to placing him there. The background checks did not reveal anything that gave DCFS concerns about J.A.'s safety in the home.

¶ 11 The court found that it was in J.A.'s best interests to terminate respondent's parental rights. It found "very dim" the prospects of J.A.'s reunification with respondent. The court noted that respondent was given an opportunity to engage in services and failed to complete them. Nor did her visitation with J.A. ever become unsupervised. Overall, theses failures rendered it unlikely that reunification could occur in a reasonable period, which would be contrary to J.A.'s overriding best interests in permanency. In contrast, J.A. was currently living in a household where he was supported and bonded with his grandmother. Karen is J.A.'s home and family. The court found that, in addition to their bond, Karen protects J.A. and meets his physical and emotional needs. Finally, the court noted that it took respondent and Joe's testimonies "with something of a grain of salt," as their accusations were not corroborated in the record.

¶ 12 Given the foregoing, we agree with counsel that no viable argument exists that the trial court erred in determining that respondent is an unfit parent and that it is in J.A.'s best interests for respondent's parental rights to be terminated. Proceedings to terminate parental rights are governed principally by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2018)) (Act) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2018)). The Act provides a two-step process for the involuntary termination of parental rights. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must prove that the parent is unfit by clear and convincing evidence. *Id.* Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists the grounds under

which a parent can be found unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Second, if the court makes a finding of unfitness, the court then considers whether it is in the best interests of the minor to terminate parental rights. *Deandre D.*, 405 Ill. App. 3d at 953. The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interests. *Id.*

¶ 13 As to unfitness, we will reverse a finding of unfitness only where it is against the manifest weight of the evidence, that is, where the determination is unreasonable. *In re D.W.*, 386 Ill. App. 3d 124, 139 (2008). The grounds for finding unfitness under the Adoption Act are independent, and we may affirm the trial court's judgment if the evidence supports any one of the grounds alleged. See 750 ILCS 50/1(D)(m) (West 2018); see also *In re B'Yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. In his memorandum, counsel lists possible arguments for attacking the court's findings as to each ground of unfitness, as well as his position as to why each of those arguments is not viable. However, *we* may affirm if any *one* ground is supported. Because, at a minimum, the court's finding that respondent was unfit for failing to make reasonable progress toward the return of J.A. to her during a nine-month period after the adjudication of neglect, specifically, from April 8, 2020, to January 7, 2021, (750 ILCS 50/1(D)(m)(ii) (West 2018)) was not against the manifest weight of the evidence, we agree that there is no arguable merit to appealing the court's unfitness finding.

¶ 14 Specifically, reasonable progress is an objective standard that requires, at a minimum, "measurable or demonstrable movement" toward reunification. *In re Daphnie E.*, 368 Ill. App. 3d 1053, 1067 (2006). According to Kitchen's testimony and the August 3, and December 14, 2020, service plans, respondent objectively did not progress in her recommended services. For example, the August 2020 report reflects, in part, that "[respondent] is not engaged in all services requested

of her. [Respondent] has been asked many times to complete an updated mental health assessment and she has not done this. In March 2020, [respondent] was unsuccessfully discharged from counseling due to missed appointments and lack of follow up. [Respondent] has not maintained consistent contact with [the caseworker]." Further, respondent had repeatedly been asked to engage in an updated mental health assessment, as there were reports that she had a personality disorder, but she refused. Moreover, the December 2020 report reflects that respondent was also repeatedly referred to counseling to address anger, domestic violence, and her failure to accept responsibility for why the children came into care, yet she did not engage in that recommended service. Kitchen testified that, since January 2020, respondent had not made reasonable efforts or progress on any recommended service, and the agency continued to be concerned about respondent's ability to parent based on unstable mental health, untreated substance abuse, and continued domestic violence. At the unfitness hearing, respondent essentially testified that the services were unnecessary and that she did not have any issues requiring services. In her response to counsel's motion to withdraw, respondent does not specifically address why the court's reasonable progress finding was erroneous, such that counsel could raise a viable argument in that regard, although she again states that there is nothing unfit about her. Nevertheless, reasonable progress requires measurable or demonstrable movement toward reunification. See *Daphnie E.*, 368 Ill. App. 3d at 1067. Here, the evidence demonstrated no progress toward reunification between April 2020 and January 2021, and the court's finding of unfitness was not against the manifest weight of the evidence. As such, we agree with counsel that no viable argument challenging the court's finding of unfitness could be raised.

¶ 15 We also agree with counsel that there is no arguable merit to an argument that the court erred in its best-interests determination. At the best-interests stage, the court "focuses upon the

child's welfare and whether termination would improve the child's future financial, social[,] and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002). "[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." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The court must consider the following factors in making a best-interests determination: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachments, including where the child feels love, attachment, and security; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2018). We will reverse a best-interests finding only when it is against the manifest weight of the evidence. See *In re N.B.*, 2019 IL App (2d) 180797, ¶ 43.

¶ 16 Here, J.A. has never been in respondent's care, even for unsupervised visits. Respondent did not complete her recommended services. In contrast, the record reflects that J.A. has been placed with Karen for most of his life. They are bonded, she is his family, and he looks to her for comfort. Not only has Karen met J.A.'s basic needs, but he has special needs, and she has been taking him to his therapies and weekly appointments to address them. Karen has also worked to preserve J.A.'s sibling relationships and is willing to provide permanency through adoption.

¶ 17 In her response to counsel's motion to withdraw, respondent does not address why the court's best interests finding was erroneous, although she does mention a conspiracy and "plot" by Karen. As the trial court found similar allegations not credible and unsupported, we cannot

now deem respondent's accusations an appropriate basis to challenge the court's best interests determination. Respondent also mentions her concerns that J.A. is in danger where he is placed; however, the allegations are unsupported, and the record reflects that DCFS performed background checks on his placement and has no concerns about J.A.'s safety there. In sum, when weighing J.A.'s best interests, the trial court properly considered the relevant factors, including that of permanency, and the record supports its findings. Thus, we cannot conclude that there is arguable merit to a challenge to the court's finding that it is in J.A.'s best interests to terminate respondent's parental rights.

¶ 18 Accordingly, after examining the record, the motion to withdraw and the memorandum of law in support thereof, as well as respondent's response to the motion to withdraw, we agree with counsel that the appeal presents no issues of arguable merit. Thus, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, counsel's motion is granted and the judgment of the circuit court of Winnebago County is affirmed.

¶ 21 Motion granted; affirmed.