2024 IL App (2d) 240495-U
Nos. 2-24-0495 & 2-24-0498 cons.
Order filed November 13, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re C.B., a Minor	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 24-JA-39
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Natali G., Respondent-Appellant).	)	Honorable
	)	Kathryn D. Karayannis,
	)	Judge, Presiding.

In re A.B., a Minor	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 24-JA-40
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Natali G., Respondent-Appellant).	)	Honorable
	)	Kathryn D. Karayannis,
	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's attorney is granted leave to withdraw, where she demonstrated that there was no nonfrivolous issue to raise on appeal. Affirmed.

¶ 2 On July 18, 2024, the circuit court of Kane County entered orders terminating the parental rights of respondent, Natali G., with respect to her children, C.B. (born October 1, 2015) and A.B. (born October 5, 2016).[1] Natali timely appealed.

¶ 3 In each appeal, Natali's appointed appellate counsel has moved to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1968). See *In re Alexa J.*, 345 Ill. App. 3d 985 (2003) (holding that *Anders* applies in termination-of-parental-rights cases and outlining the procedure to be followed when appellate counsel seeks to withdraw). According to appellate counsel, these appeals present no potentially meritorious issues for review. Counsel served Natali with a copy of each motion and its accompanying memorandum; Natali has not responded. We hereby consolidate the appeals for decision. After reviewing the record and counsel's motions, we grant the motions and affirm the court's judgments.

¶ 4 I. BACKGROUND

¶ 5 On March 5, 2024, the State filed neglect petitions on behalf of the children, alleging that they were abused and neglected pursuant to sections 2-3(1)(a) and (b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a), (b) (West 2022)). The children's father appeared and stipulated that the evidence was sufficient, whereas Natali tried to appear via Zoom, but could not join due to her unsecure location. The court found sufficient evidence to place the children in the care of the Department of Children and Family Services (DCFS), noting,

> "[Natali] drove [A.B.] to the hospital this morning. Upon arrival, [A.B.] was in full

[1]Due to his conviction for predatory criminal sexual assault, the children's father is incarcerated until 2038. On June 5, 2024, he voluntarily surrendered his parental rights to C.B. and A.B.

> cardiac arrest and unconscious. He is 7 years old and weighs 14 pounds. He has not seen a doctor since he was 1. He weighed 16.7 pounds when he was seen at age 1. [A.B.] has an abrasion to his right hip and is missing a toenail on his right toe. [A.B.] coded four times while trying to transfer him to Lutheran General. He was successfully revived and is in the pediatric intensive care unit. [Natali] could not provide an explanation of why [A.B.] was underweight or why he had injuries."

¶ 6 On April 29, 2024, the State filed a combined petition for adjudication and expedited termination of parental rights. As to A.B., the State asserted that Natali was unfit in that she: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to his welfare (750 ILCS 50/1(D)(b) (West 2022)); (2) engaged in continuous and repeated substantial neglect (*id.* § 1(D)(d)); (3) engaged in extreme or repeated cruelty (*id.* § 1(D)(e)); (4) failed to protect him from conditions within his environment injurious to his welfare (*id.* § 1(D)(g)); and (5) demonstrated a repeated or continuous failure, although physically and financially able, to provide him with adequate food, clothing, or shelter (*id.* § 1(D)(o)).

¶ 7 As to C.B., the State asserted that Natali was unfit in that she failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to C.B.'s welfare (*id*. § 1(D)(b)); and (2) protect C.B. from conditions within her environment injurious to her welfare (*id*. § 1(D)(g)).

¶ 8 At the fitness hearing, Dr. Anna Pesok was accepted as an expert in child abuse pediatrics. On March 5, 2024, Pesok was working at Advocate Children's Hospital as a physician on the child protection team when she was called in to treat A.B. She explained that she was called because A.B.'s physical condition reflected severe malnutrition without a medical explanation. Pesok saw A.B. shortly after his admission and when he was intubated in the intensive care unit. She noted that his intubation did not require sedation, which spoke to his "very, very depressed" neurological

state. A.B. was "beyond critical." He had experienced cardiac arrest at the initial treatment facility, requiring CPR and aggressive resuscitation with medication. While being transported to the hospital (where Pesok eventually saw him), A.B. experienced a second cardiac arrest, and the health workers had to stop transport to perform CPR. Again, upon arrival at the hospital, A.B. suffered a third cardiac arrest, and health care workers continued chest compressions and code procedures. When Pesok saw A.B., his heart was beating with an "extraordinary amount of support."

¶ 9 Upon arrival at the hospital, A.B. weighed 15.1 pounds. He was seven years old and mostly skeletal. When asked to describe his physical appearance, Pesok explained,

> "I—I have been a physician for years [19] and an attending for [16], we just calculated and I don't have the words to describe what I saw when in walked in [A.B.'s] room. I was told that we had a seven-year-old who weighed 15 pounds. My brain could not grasp what that would physically look like. I didn't, and still don't, honestly, hope to ever have the words to describe what I saw, which is why my physical exam and my documentation is actually a picture. I rarely use pictures in my notes because I have a good grasp of the English language and a minor in English Lit and I can describe just about anything. I [had] to use a picture in my notes because I could not describe to you what I saw. What I saw was a degree of emaciation that I've never seen before and I've worked in—in Africa during the famine and I have been to Auschwitz and seen the pictures. This was worse than anything than I had ever seen in my life and I hope to never ever see it again."

¶ 10 She continued that A.B. had no muscle mass, bed sores, and his skin had broken open on his right hip bone. His skin's consistency looked like a cross between leather and tissue paper.

The medical records reflected that A.B. was "emaciated," which Dr. Pesok explained was a "pretty word for starved." Based upon her examination, Pesok testified that A.B. would not have been mobile for around one year prior to his hospitalization, as the lack of muscle mass would have made it physiologically impossible for him to hold up his own head or lift more than a finger at best. Pesok explained that A.B.'s body had worked to preserve his brain, so his head was overwhelmingly the biggest part of his body. Because skull bones are big and heavy, A.B.'s neck muscles would have been unable to support his head. His bone age was consistent with that of a three-year-old child, which reflects that, between ages three and four, his body no longer received the nutrition necessary for continued normal growth. A.B. was close to death upon his arrival, and he suffered from multisystem organ failure, such that his "organs had all shut down, brain, lungs, kidneys, bowel. The only thing that kept barely working was his little heart. And then when he presented to us it was at the point which it too had run out of energy to keep going." According to Pesok, severe end-stage malnutrition caused A.B.'s organs to fail.

¶ 11 Dr. Pesok explained that it took the medical team around three weeks and "heroic efforts" to stabilize A.B. To do so, the team reached out to Doctors Without Borders, an organization of physicians from across the world that work to provide medical support in critical situations, such as massive famine or natural disasters, because "we had never seen a case of starvation this significant on this continent, at least nobody we knew had, and we initially reached out to some of our colleagues who deal with migrant populations and who deal with refugees and they looked at us like we were crazy for what we were asking." Ultimately, Doctors Without Borders gave Pesok's team information on how to rebuild A.B.'s body without causing more problems. The team was cautious about refeeding syndrome, which may result in death when giving food to survivors of starvation because feeding too fast disrupts the balance the body has tried to maintain

to survive. Accordingly, the introduction of nutrients and calories to A.B. was very slow, as his team was concerned his kidneys would fail and his abdominal lining or bowels might perforate. Fluids and calories were gradually introduced, with labs drawn every four hours; ultimately, he was stable enough to receive nutrition intravenously at a rate of approximately one ounce of formula over 30 hours.

¶ 12 At the time of the hearing, A.B. weighed 31.4 pounds. He had doubled his weight, and he smiled, spoke, and gave Pesok a hug. He was being moved to a rehabilitation center, and the hospital was throwing him a going-away party. A.B.'s long-term prognosis, however, would remain "guarded," as his team could not yet know the long-term physiologic effects that his degree of malnutrition will have had on his physical growth, neurological development, and learning abilities. "It will all depend on his future environment and the support that he gets and the help that he gets and the residual damage that was done by starvation of his brain."

¶ 13 It was Pesok's opinion that A.B. was almost starved to death. Initially, the team was concerned that maybe A.B. had an underlying medical issue that caused his condition, but, ultimately, was able to rule out infectious causes, neurologic causes, a stroke, or any gastric malabsorption issues, etc. Further, looking at his medical history prior to 2019, he had grown relatively well and had gained weight appropriately in early childhood, which reflected that there was not a genetic problem that resulted in him being unable to absorb nutrition. After the team slowly reintroduced nutrition and hydration, A.B. was able to tolerate calories and nutrients and was "gaining weight beautifully," signifying that there was no medical reason for why he had deteriorated so much. "Children don't lose weight" and, when they do, it is cause for concern. "In this case, this was so far beyond just losing weight that the only plausible explanation is that he was not provided adequate food, nor could get it himself." Pesok read aloud the medical definition

of torture and opined that A.B.'s case "absolutely" met the medication definition of torture. She also opined that A.B. must have been isolated. His language skills and vocabulary were about those of a three-year-old child.

¶ 14 Pesok opined that C.B. was also subjected to abuse. Specifically, she agreed that there are both physical and psychological forms of child abuse. When asked her medical opinion about what seeing one child being neglected to the point of almost death might have on another child in the same home, Pesok explained,

> "Profound impact. I know that [A.B.'s] sister is a physically healthy young lady. She has got some learning disabilities, some developmental delays, but she is a very appropriate savvy little eight-year-old. And given what I know about the living situation and the social interaction between her and her caregivers and [A.B.] from her forensic interview, as well as from interviews with others, is that she was aware of his existence. I don't know how much exposure she had to seeing him at least in the last year or so. I do know that this was not a [24,000] square foot castle where she was in a different wing and didn't know he existed or couldn't hear or see him at all. You know, they're curious. *** I also know that *before [A.B.] was in the condition that he was in when he came to us, there had to be a prolonged period of time where [A.B.] was in significant distress, where he had to be in pain, where had to be screaming out of shear hunger, and I can't imagine that she was not aware of that happening in her home.* Therefore, I can only surmise that being aware of that happening would be incredibly traumatic to a child and also cause a significant amount of fear for her own safety. Naturally, instinctively as humans we know that when other humans are in distress we are probably in danger. We evolved to know that. And I can't fathom how she would not be aware of the fact that she was at risk for

the same kind of treatment." (Emphasis added.)

¶ 15 Brianna Giovanetti testified that she works for DCFS as a child protection investigator, and she was assigned to this case in early March 2024. As part of her investigation, she went to the apartment in Elgin where the children lived with Natali and another woman, Eulalia Vences, who C.B. sometimes referred to as a grandmother, but was actually a family friend who cared for the children when Natali was not present.[2] Giovanetti described the residence,

> "The home consisted of a living room, a kitchen, and two bedrooms. I learned that one bedroom that had a bed in it consisting of female clothing, child clothing in abundance was [C.B.'s] and Natali's room. There was a second bedroom that consisted of a foam pad, no clothing or any items in the room for any male or female child or adult. There was [*sic*] three plastic drawers that were full of diapers. There was a pillow and sheets on the foam. There was a sheet covering the window and nothing on the walls."

Giovanetti determined that Vences slept on the couch in the family room, while C.B. and Natali shared the bedroom with abundant clothing for C.B. A.B. was kept in the room with a foam pad on the floor (no mattress) and the plastic chest of drawers filled with diapers was the only "furniture" in the room. No clothing was in his closet or the plastic drawers.

¶ 16 Giovanetti took the children into protective custody. When Giovanetti questioned Natali about the health of the children and A.B.'s condition, Natali stated that he had a cough, and she did not take him to the doctor due to him not appearing ill. She indicated he had no medical diagnosis regarding him being underweight and that a physician, whom she was unable to name, told her that he was underweight but to continue feeding him. Natali reported that A.B. was

[2]Vences faces pending criminal charges regarding the facts of this case.

enrolled in school, but there was no record reflecting that was the case. C.B. appeared to be in good health, average height and weight for her age, and able to communicate at age-appropriate levels. However, she had limited fine motor skills and self-care abilities for her age, as well as significant dental needs.

¶ 17 Numerous documents were entered into evidence, including certified medical records for A.B., school records, DCFS reports, cell phone messages between Eulalia and Natali, and Natali's Google searches.

¶ 18 Natali testified that she is 30 years old and has two children, C.B. and A.B. Both children have the same father, who is in prison. When asked the last time he had contact with the children, Natali's attorney interjected and explained that, depending on the question, he would be instructing Natali to exercise her Fifth Amendment privilege against self-incrimination, as he was not representing her in her criminal matter, and he was not aware of what defenses or affirmative claims she may make in that case. Natali ultimately testified that the children were not diagnosed with any medical problems, that A.B.'s favorite food was chicken nuggets, and that the children liked to play, run, and color and would run in the apartment and at the park every Saturday. She testified that C.B. received vaccinations in 2023. She could not recall the names of C.B.'s friends. Natali agreed that, on March 5, 2024, she lived in her apartment with C.B., A.B., and Eulalia. C.B.'s clothing was kept in "our bedroom," which she explained was her bedroom, and that she and C.B. slept in the same bed. C.B.'s clothes were kept in the drawers, closet, and in some bags, while Natali's clothes were kept in the closet and another drawer. When asked where A.B.'s clothes were kept, she stated "[b]oth the rooms." For most other questions, counsel advised Natali to exercise her Fifth Amendment privilege.

¶ 19 After the State rested, Natali's counsel informed the court that he would not be presenting

a case for adjudication or unfitness. In his closing argument, counsel recognized that this was undisputedly a difficult case. He noted, however, that an expedited termination of parental rights procedure is "basically the death penalty of the civil realm" and is one of the most severe actions that could be taken in the civil actions. Counsel argued that, while the number one goal is to protect children, another goal reflecting societal norms and rights includes efforts at family reunification. He noted that Natali had not been provided with an opportunity to make reasonable efforts towards reunification or for rehabilitation. And, while Natali was facing criminal penalties, which hampered her ability to put on a full case, counsel urged that there was no need to rush to judgment or to not offer Natali the chance for rehabilitative efforts, which should be offered to every parent, even in the toughest cases.

¶ 20 In rebuttal, the State noted that, with respect to the most horrific cases, its petition alleged torture and, so, when we consider what society deems appropriate and how to handle cases, "we as a society do not and should not accept children being starved and tortured to death." According to the State, while termination of rights is the most severe consequence, it was also the most deserving, because the actions were "so outrageous and horrific *** and there is nothing that can be done to help rectify the situation through reasonable efforts." The State asked the court to find A.B. was abused and neglected, C.B. was neglected, and that Natali was unfit based on her actions toward A.B. and forcing C.B. to witness those actions.

¶ 21 The trial court recognized that the hearing concerned a combined petition for adjudication and an expedited request for termination of parental rights. It found that the State had demonstrated unfitness on all grounds set forth in its petitions as to both children. As to A.B., the court found that he had suffered immensely and was horribly abused and neglected by Natali. The court recounted the evidence that he had endured multiple cardiac arrests and multisystem organ

failure due to the starvation Natali inflicted upon him, that he had not received proper medical care and was "locked in a room," essentially left to die. His bone growth demonstrated that it stopped around three to four years of age. Nor did Natali enroll him in school. The court found it emotional, but not difficult, to find that the State met its burden, and "[t]here is no question that each and every one of those paragraphs [in the petition] has been proven."

¶ 22 With respect to C.B., the court found her a neglected minor because of what had happened to A.B. and the presumption that, when one child is abused, there may be anticipatory abuse and neglect and willful disregard of the duties the parent owes to other children. "[N]o one has to wait for another child to suffer the same fate as the abused child prior to a court finding that the child is neglected. They don't have to be the direct victim of the neglect or abuse." The court found that C.B. resided in a home with A.B., who, according to his doctor's testimony, was tortured, and that it was not proper to wait for C.B. to be put in the same tragic situation. In addition, the court noted that C.B. was deprived of several years of a normal relationship with her brother. According to the evidence, C.B. spoke about playing with A.B. and running around and having fun, and it could "only presume that she is recalling the time before which she couldn't have any contact with her brother because he was locked in a room and she can't get into the room and he couldn't answer the door and she thought it was because he was on the phone," which was not likely, based on the medical evidence, because he was being starved by Natali. The court further stated,

> "So, this is a child who you presumably love, not [A.B.] for sure, but [C.B.] and, yet, you subject her to living in a home with your son who you are not caring for who she knows exists, who according to the [d]octor's testimony was very likely at a period of time as the malnutrition and starvation became worse, was screaming and crying in pain and, yet, you left your daughter in that same home to be subjected to the horrors of her brother

> screaming and crying in pain. That certainly does not show a reasonable degree of interest, concern, or responsibility for [C.B.]"

The court found, based on the exhibits, that C.B. made things up about A.B. and had no sense of reality. For example, the day A.B. went to the hospital, she said he had been eating a donut with her in the kitchen. The court found that the exhibits reflected that C.B.'s mental health was clearly injured. Again, the court found that the State proved each allegation in the petition with respect to Natali's unfitness regarding C.B.

¶ 23 In closing, the court commented,

> "I want to make it clear, it's clear to me, [Natali], that you knew all of this that was going on. The cell phone records show that you knew what was happening to [A.B.] There is no question. He lived in your home. What you testified to and what you reported prior to being in court[— that] he was enrolled in school, he was able to play and run[—] all rebutted, all rebutted by the exhibits. He was never enrolled in school. He wasn't able to play and run unless you were talking about maybe when he was three, and if that's the case, that's irrelevant. The cell phone extractions do show a concern that you had about [C.B.], but nothing about [A.B.] Your *** Google extractions show that you are Googling about a fever in an eight-year-old *** but when you Google [ ] on March 5, 2024, you Google what happens if I take my—and you put in there 'my underweight seven-year-old to an E.R.? Would I get DCFS sent to my home?['] You know [A.B.] is your child. *** You're not worried about what's going to happen to him. You are worried about what's going to happen to you. Is DCFS going to come to your home. Thank God they did.
>
> I've never really seen a case where a mother is so unfit in relation to both of her children for different reasons, in terms of the torture and abuse that you subjected [A.B.]

> to and the total disregard and concern for what this would do to your daughter. I've been a lawyer for a long time and judge for [12] years and I've never seen anything like the pictures that I had to look at in this case."

¶ 24 The court next addressed the adjudication portion of the petition, specifying that it was appropriate to make both children wards of the court, adjudicate them abused and neglected, award custody and guardianship to DCFS, and that no reasonable efforts could prevent or eliminate the need for the removal of the children from the home. Visitation to Natali was denied, and the court found that the integrated assessment indicated that Natali did not have concerns regarding A.B.'s medical care and continued to question why DCFS remained involved. There did not seem to be evidence that Natali had hallucinations, delusions, or other issues with thought processes, but continued to believe there were no medical concerns related to A.B., despite overwhelming evidence to the contrary. That Natali had no concern about his medical condition was, the court found, "astounding." In addition, C.B. was dehydrated, her toenails were growing into her toes, she had poor personal hygiene, did not know how to use the bathroom properly, and was not toilet trained when she first went to school. Thus, there was a concern for Natali's overall ability to assess and understand information, and it was unclear if "she was in denial for self-preservation or if there was a delusional thought process." As such, there would be no treatment recommendations that would mitigate the risk to any child in her care and or assist with reunification. The court found that reasonable efforts could not be made in a timely fashion that would allow C.B. to be returned to Natali, and it did not think such measures should be forced upon A.B., nor could she ever be a safe parent to either child. Accordingly, the court found no reasonable efforts were required, and it immediately proceeded to a best-interest hearing on the termination portion of the petition.

¶ 25 With respect to best interests, Kristin Cwik testified that she was employed as a child welfare specialist with DCFS and was assigned to this case. A.B. had been released from the hospital and the pediatric rehabilitation facility. Upon his release, he moved into the same traditional foster home where C.B. had been living for two months. It is a large home in a subdivision that also has many children. The home had five bedrooms, ample living space, and a recreational room with activities, such as a ping pong table. Each child had his and her own bedroom and an abundance of toys, as well as clothing. They are the only children in the home, with both a foster mother and father. Cwik has observed the children in the home, and they have wonderful interactions with their foster parents. In fact, the foster parents were involved with A.B. while he was in the hospital and in the rehabilitation facility, maintaining almost daily contact. As such, they built a relationship with him prior to his coming home with them. "And I would say that they are all very happy and care very much for each other." Both children were bonded to the foster parents and referred to them as mom and dad. Although it was summer break, they had meetings with the school, who would be evaluating A.B. to get him ready for the next school year. C.B. was already registered for school, and it was aware of her IEP. The foster parents were willing to work with the school for each of the children's needs, and the foster mom is a school psychologist and the foster dad is a teacher. "[T]hey are well equipped to advocate for these children's educational needs." A.B. will definitely need continued medical care, and the foster parents are "absolutely" willing to ensure he receives that care. They had "gone above and beyond traditional or typical foster parents and [Cwik had] absolutely no doubt that these children will get everything that they need both physically and emotionally." C.B. was in a summer camp, while A.B. attended three days per week of intensive outpatient therapy for three hours at a time, in addition to his ongoing medical appointments. He had not missed any medical appointments since

he had been released. The home was a pre-adoptive home, and the foster parents were willing to grant permanency to the minors and adopt both children. The children would remain together.

¶ 26 On cross-examination, Cwik explained that, although the children are Hispanic and the foster parents are not, the primary concern was to find the children parents that were equipped to manage their profound needs and were willing to keep the children together and do what was necessary to ensure the children had everything that they needed. "[T]hat was the number one thing that I looked for, which to me outweighed ethnicity." C.B. speaks fluent English, while A.B. speaks more Spanish than English; however, the foster mother is a fluent Spanish speaker. Cwik further explained that all family members were ruled out in this case, as their father's mother had been indicated many times by DCFS, and Natali's family was ruled out because they knew that Natali exhibited different treatment to the children, but did nothing to protect A.B. Further, they refused to participate in the criminal investigation against Natali, and she had often spent time at her father's home after the children were taken, which made it not a suitable placement. In addition, Natali's father called the DCFS hotline requesting information and stating that they were happy children, that Natali was a good mother, the kids were well fed, and she kept a clean home. Cwik did not consider someone who could make such statements, given the facts, to be someone she could consider a safe placement for the children. The foster home would promote relationships between the children and their remaining extended family only if it was deemed appropriate and safe, which would require an ongoing assessment.

¶ 27 Natali's counsel did not present a case for best interests. His closing argument urged the court to consider the rushed proceeding and the fact that A.B. had been in the residence for only a short time, and C.B. had "very strong ties" with her family, such that whether there would be continuity in those family ties should be examined.

¶ 28 Following argument, the trial court considered the relevant statutory factors (705 ILCS 405/1-3(4.05) (West 2022)) and found that it was in the best interests of the children to terminate Natali's parental rights. The court found that, although the children had been residing in the current placement for a relatively short period (around two months), it was clear that they were stable, secure, bonded with their foster parents, and not subjected to emotional or physical abuse. C.B. would be with her brother, which the court found "very important, especially in this case." The foster parents were well-equipped to deal with both A.B.'s physical and mental health trauma needs, as well as C.B.'s needs to address trauma and re-establish a relationship with A.B. The home was appropriate and in a community such that they would likely go to school with the neighborhood children. The foster parents were willing to provide permanency, and seemed willing to at least consider, if appropriate, contact with extended family. The court found that, "even if this were not a pre-adoptive home, I would certainly be in a position of finding that it's in the best interests of both of these minors that the parental rights of their mother *** be permanently terminated with respect to both [C.B.] and [A.B.]" The court ordered that Natali's parental rights be permanently terminated, and it changed the goal to adoption. Natali appeals.

¶ 29 II. ANALYSIS

¶ 30 Counsel's motions state that she has thoroughly reviewed the record and has concluded that there are no meritorious issues to be raised on appeal. In accordance with *Alexa J.*, counsel has identified two potential issues she considered raising, but which she found not arguably meritorious. The first is whether the court's rulings were against the manifest weight of the evidence. The second is whether Natali received ineffective assistance from counsel. Otherwise, counsel states that her review of the record could identify no justiciable issue regarding procedural due process or issues of evidentiary introduction, admissibility, or sufficiency.

¶ 31 A. Termination Decision

¶ 32 As for the first issue, counsel considered raising that Natali did not fail to protect her children from conditions injurious to their environment because, according to Natali's testimony and her conversation with Giovanetti, A.B. did not have any medical issues, he would play and run in the park, and, although he was underweight, everything was alright with him. Further, counsel could assert that C.B. was healthy and that her removal from Natali's care was unwarranted.

¶ 33 However, counsel has determined there is no arguable merit to this issue because Natali's assertions are not supported by the medical evidence, DCFS records, or any evidence presented by Natali herself. In contrast, counsel notes, the record overwhelmingly reflects that A.B. "suffered a horrible life" and that Natali "fully knew about her son's condition as she lived with him and cared for him, but still did nothing to help him." Counsel notes that Pesok's testimony as a child abuse pediatrician and expert in child abuse was uncontroverted and very clear: A.B. suffered multisystem organ failure due to severe end-stage malnutrition, he stopped receiving proper nutrition around age three, he would not have been mobile or able to sustain the weight of his own head for around one year prior to his hospitalization, and he was unequivocally subjected to torture. Pesok explained that she had no words to describe his condition, even though she had worked in Africa during a famine, and she resorted to taking photographs of A.B. to reflect his condition after a series of cardiac arrests. Counsel asserts that the photographs in the record and description of what A.B. endured for treatment are "horrifying." As Pesok explained, C.B. was also maltreated by virtue of living in the same small home where her brother was being starved to death. Indeed, A.B. most likely screamed from pain and hunger and C.B., aware that A.B. was in his room, must have heard the screams. Counsel explains that the evidence supports the court's finding that, by being subjected to this environment, C.B. was a neglected minor. And, counsel notes, the court was

correct that, under the theory of anticipatory neglect, the State did not need to prove that C.B. was directly harmed and the court could find her neglected based on the abuse to A.B. "In this case, counsel does not believe that the Court had any other option but to find C.B. neglected and [Natali] to be unfit. [Natali] did not provide the court with any explanation for the minor's condition or any defense as to why she did not fulfill her responsibilities to the minor as his mother[.]" We agree.

¶ 34 "Under the Juvenile Court Act, parental rights cannot be terminated absent the parent's consent unless the court first determines, by clear and convincing evidence, that the parent is an 'unfit person' as defined by section 1(D) of the Adoption Act [citation]." *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). In the instant case, there is overwhelming evidence to support the trial court's finding that the State met its burden of establishing by clear and convincing evidence that Natali was unfit to care for both children on all grounds as alleged in the termination petitions. We have already recounted at length the evidence and trial court's findings, and we need not repeat them all here. In short, and as counsel accurately summarizes, the horrifying uncontroverted evidence reflects that, due to Natali's actions to starve, neglect, and abuse seven-year-old A.B., he arrived at the hospital weighing 15 pounds with multisystem organ failure and incredibly close to death. His development stopped around age three, reflecting extended deprivation and medically-defined torture. C.B., in turn, endured living in a household where her brother was suffering from torture and starvation, with probable screams of pain, and she displayed some distorted sense of reality regarding his condition. We agree with counsel that there are absolutely no issues of arguable merit regarding the court's finding of unfitness.

¶ 35 Similarly, we note, no issues of arguable merit exist regarding the court's best-interests finding. At that stage, the focus shifts to the child. "The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be

terminated. Accordingly, at 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). At a best-interests hearing, the State bears the burden of proving by a preponderance of the evidence that it is in the child's best interest to terminate the parent's parental rights. *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 43. The Act directs that, in making a best-interest determination, the court must consider certain factors, such as the physical safety and welfare of the child, including food, shelter, health, and clothing; the child's sense of security; the child's community ties, including church, school, and friends; and the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures, siblings, and other relatives. 705 ILCS 405/1-3(4.05) (West 2022).

¶ 36 Again, there is no arguable merit to an argument that the State here failed to meet its burden by at least a preponderance of the evidence. On the advice of counsel, Natali did not testify at the best-interests hearing. Nevertheless, the court expressly considered the above factors and found that the children's needs for stability, physical and emotional safety, and school and community opportunities, rendered termination appropriate. Although defense counsel raised the question of ethnicity and continuity of relationships with extended family, the evidence reflected that safety and the ability to keep the children together and meet their needs outweighed ethnicity (although the foster mother does also speak fluent Spanish) and that relationships with extended family would require an ongoing assessment for safety and propriety. The court found, based on the uncontroverted evidence, that the foster parents were well-equipped and willing to provide physical and emotional safety to A.B. and C.B., to keep them together and provide permanence, and to meet their significant needs. In short, the court properly found that the State met its burden of

establishing that it was in the children's best interests to terminate Natali's parental rights, and we see no arguable basis for counsel to challenge the trial court's best-interests finding.

¶ 37 B. Ineffective Assistance of Counsel

¶ 38 Next, addressing representation, appellate counsel represents that she considered whether Natali's appointed counsel at the hearing failed to adequately represent her, because he did not present evidence on her behalf throughout the proceedings. She acknowledges that termination of parental rights is one of the most severe legal remedies a court can impose against a parent, and attorneys must provide their clients with zealous advocacy. However, appellate counsel concludes, no such issue would be arguably meritorious. First, she explains that the record reflects that, during the adjudication, disposition, and termination proceedings, Natali was in custody facing criminal charges regarding the facts of this case. This fact "dramatically tied [counsel's] hands in defending [Natali] and presenting evidence on her behalf," yet the record clearly reflects he attempted to advocate on her behalf, asked questions, objected, and participated, all while trying to ensure that his defense did not injure her criminal case. For example, her counsel timely and appropriately advised Natali to assert her Fifth Amendment privilege to protect her from statements that could negatively impact her criminal case and, ultimately, her freedom. As such, there is no argument that his performance was deficient and, therefore, no argument that Natali was prejudiced thereby. Appellate counsel concludes that she "firmly believes that [Natali's] parental rights would have been terminated irrespective of who her attorney was, or what they did in her representation."

¶ 39 We agree with counsel that there is no meritorious issue regarding ineffective assistance of counsel. The right to counsel in termination proceedings is provided by section 1-5(1) of the Act (705 ILCS 405/1-5 West 2022)), not the United States Constitution. *In re Br. M.*, 2021 IL 125969, ¶ 41. Though there are differences between criminal law proceedings and proceedings under the

Act, the supreme court has endorsed the use of the *Strickland* standard as "a helpful structure" in evaluating a claim of ineffective assistance of counsel under the Act. *In re Br. M.*, 2021 IL 125969, ¶ 43; see *Strickland v. Washington*, 466 U.S. 668, 687-94 (1984).

¶ 40 Under *Strickland*, to prevail on a claim of ineffective assistance of counsel, a party must demonstrate that their counsel's representation "fell below an objective standard of reasonableness" and that such a shortcoming was prejudicial in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 687-94.

¶ 41 Although the record reflects that Natali's counsel did not present evidence on her behalf, it also reflects that counsel actively participated as an advocate for her interests through his argument, witness examination, objections, and by advising her to assert the Fifth Amendment privilege when appropriate. Counsel's hands were, indeed, somewhat tied in what he could present or what he could advise Natali to explain in her testimony, as she faced criminal charges from the facts of this case. Counsel also properly argued to the court, albeit unsuccessfully, that it should remain mindful that expedited termination proceedings circumvent some important societal goals, such as the opportunity for a parent to engage in rehabilitative and reunification efforts, and that the children had been placed in the foster home for a relatively short period and continued relationships with the children's extended family should be explored. In sum, particularly given the facts and circumstances of this case and his client's criminal charges, there would be no arguable merit to an argument that counsel's performance was deficient. As such, an ineffective-assistance argument would fail.

¶ 42 In sum, we agree with appellate counsel's assertion that there are no arguably meritorious issues to be presented for review, and her request to withdraw is granted.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we grant counsel's motions for leave to withdraw and affirm the judgments of the circuit court of Kane County.

¶ 45 Affirmed.