2024 IL App (4th) 240833-U

NOS. 4-24-0833, 4-24-0834, 4-24-0835 cons.

FILED
September 20, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Z.L., D.L. and S.L., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	Nos. 19JA236
v.	)	19JA237
Samantha L.,	)	19JA238
Respondent-Appellant).	)	
	)	
	)	Honorable
	)	David A. Brown,
	)	Judge Presiding.

PRESIDING JUSTICE CAVANAGH delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment terminating respondent's parental rights.

¶ 2 In October 2023, the State filed petitions to terminate the parental rights of respondent, Samantha L., to her minor children, Z.L. (born May 2014), D.L. (born November 2016), and S.L. (born November 2017) (collectively the minors). Following the fitness and best interest hearings, the trial court granted the State's petition and terminated respondent's parental rights. (The parental rights of the minors' father were terminated as well; however, the father is not a party to this appeal.) Respondent timely filed a notice of appeal, and counsel was appointed to represent her. Appellate counsel now moves to withdraw pursuant to *Anders v. California*, 386

U.S. 738 (1967), contending there are no meritorious issues of procedure or substance to be raised on appeal which would warrant relief. We agree, grant counsel's motion to withdraw, and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In August 2019, the State filed separate neglect petitions for the minors pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act), contending the minors' environment was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2018)). The petitions alleged: (1) the minors were previously made wards of the court in Livingston County, and those cases were closed in February 2019; (2) in July 2019, respondent, while with the minors, committed a retail theft and, while running to her vehicle, dropped D.L. on his face and then, once in her vehicle, fled from the police at a high rate of speed until the pursuit was discontinued; (3) respondent ceased cooperating with the Illinois Department of Children and Family Services (DCFS) in June 2019 and had failed to submit to random drug screenings since April 2019; (4) respondent had a significant criminal history; (5) the father was a registered child sex offender; and (6) the father had a significant criminal history. Following a hearing, the trial court entered a temporary shelter care order placing the minors in the custody of DCFS.

¶ 5 In October 2019, respondent waived her right to an adjudicatory hearing and stipulated the State could prove its petitions. The trial court found the State's factual basis sufficient to accept respondent's stipulation and adjudicated the minors neglected. Following the dispositional hearing, the court entered an order making the minors wards of the court after finding respondent unfit or unwilling for reasons other than financial circumstances to properly care for the minors. Custody and guardianship of the minors was placed with DCFS, and respondent was ordered to cooperate with all directives from DCFS.

¶ 6 In October 2023, the State filed petitions to terminate respondent's parental rights. The termination petitions each alleged respondent had failed to make reasonable progress toward the return home of the minors within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2022). The relevant nine-month period was defined as July 28, 2022, to April 28, 2023.

¶ 7 A. Fitness Hearing

¶ 8 In April 2024, the trial court held a hearing on the State's petition to terminate respondent's parental rights. At the hearing, certified records from Help at Home were admitted without objection, which showed respondent tested positive for marijuana 13 times and cocaine once between December 2022 and February 2024. Respondent's certified counseling records were admitted without objection. Certified records from FamilyCore were admitted without objection, which showed respondent did not receive individual counseling services between July 2022 and April 2023. Certified records from WestCare Logan Correctional Center were admitted without objection, which showed respondent was neutrally discharged from a treatment program for not completing six months of treatment. Respondent's visitation records were admitted without objection.

¶ 9 The fitness hearing resumed in May 2024. Makaylia Jackson, the caseworker, testified without further detail that respondent was not a viable return home option for the minors. On cross-examination, Jackson confirmed respondent had completed a domestic violence program and had participated in a substance abuse program while incarcerated prior to the relevant nine-month time period.

¶ 10 Respondent testified she resided at the same residence in Peoria, Illinois, throughout the relevant nine-month time period. She confirmed she had been "incarcerated for a

substantial amount of [the nine-month period]." Prior to her incarceration, respondent was employed as a server at a restaurant and had maintained that employment upon being released. She stated she had participated in counseling from July 2022 through November 2022, while she was incarcerated. She had also participated in counseling after she was released but not during the nine-month time period. She claimed she was informed by a caseworker she did not need to participate in counseling during the nine-month period because she had previously been "successfully discharged" and "did not need it again." She desired her children to return home and stated she had a community support system. She said her relationship with her children was "great." Respondent admitted she had not participated in drug screenings during the nine-month period because she had difficulty with transportation. She said all of her incarceration periods were related to her "driving illegally."

¶ 11 On cross-examination, respondent stated she did not ask DCFS for help with transportation issues because she had previously asked them for help "and they don't help." Respondent admitted she was incarcerated for driving on a revoked license in November 2022 and January 2023. Respondent stated she had successfully completed substance abuse treatment while incarcerated, but when asked why the report stated she was "neutrally discharged," she replied, "I don't know what that means." Following respondent's testimony, the trial court took judicial notice, over the State's objection, of the fact respondent had participated in treatment prior to the relevant nine-month period.

¶ 12 Following arguments from the parties, the trial court found the State had met its burden by clear and convincing evidence that respondent had failed to make reasonable progress. Specifically, the court noted respondent had been incarcerated on a "couple" of occasions, yet, when she was not incarcerated, respondent had engaged in "dispositional requirements such as

stable housing, stable employment, and visits with the children." However, the court found respondent had failed to substantially comply with the requirements for counseling, drug testing, and drug treatment. The matter immediately proceeded to a best interest hearing.

¶ 13 B. Best Interest Hearing

¶ 14 The best interest hearing began with the trial court taking judicial notice of the best interest report prepared by Jackson. Jackson testified the minors were currently in relative care with respondent's cousin as a potential adoptive placement. Jackson visited the minors monthly at the home, and all of the minors' needs were being met. It appeared the foster parent and the minors shared a strong bond. However, Jackson said respondent had a "good relationship" with the minors. On cross-examination, Jackson confirmed respondent continued to visit the minors and wanted to be involved. She had maintained employment and had been cooperative with DCFS.

¶ 15 Respondent testified she was a "good mom" who "just messed up." She believed she was capable of providing for the minors and would utilize her cousin as support should the minors be returned to her care. Respondent explained to the trial court:

> "I have a stable house. I have a stable job. I'm getting my license back like today, so all my issues from before, I've corrected them. I fixed them. I've never—I've never done nothing to hurt my kids or to make them feel like I wasn't able to protect them or to take care of them."

¶ 16 The guardian *ad litem* (GAL) reported to the trial court that he had visited the minors at the caregiver's home in April 2024. He said she had expressed her desire to adopt the minors and the minors' needs were being met. The GAL explained the minors indicated they wished to stay in their placement, had friends, and were happy at their current school. The minors "missed" respondent and indicated "they would like to spend more time with [her]," but they felt

safe in their current home. Z.L. and D.L. "reported not feeling safe in [respondent's] home." The GAL stated adoption was in the best interest of the minors.

¶ 17 The trial court noted respondent had made some progress with housing and employment and had "stayed out of jail" over the last "year or two," but that alone did not "necessarily make someone a good mom." The court further noted the minors had been in foster care for "55 or 56 months" and found the GAL's report was "pretty powerful," stating:

> "These kids love [respondent]. They want to spend time with [respondent]. They feel safe, and they need to be with the foster mom, because the foster mom was there and supported them for those 55 or 56 months, and so, some of these best interest factors are loaded in favor of foster placement when the case has dragged on this long."

¶ 18 The trial court explained the minors' wishes, sense of attachment, and their community ties showed they have "roots" with the relative placement and any uncertainty with their current placement would cause them substantial harm. Respondent's request for more time to demonstrate her ability to care for the minors would not be in their best interest. The court found the State had met its burden by a preponderance of the evidence and terminated respondent's parental rights.

¶ 19 Respondent timely filed a notice of appeal, and the trial court appointed counsel to represent her. Appellate counsel filed a motion to withdraw pursuant to *Anders* and a supporting brief providing a statement of facts, a list of potential issues, and arguments as to why those issues lack arguable merit. See *In re J.P.*, 2016 IL App (1st) 161518, ¶ 8 (finding *Anders* applies when counsel seeks to withdraw from representation on direct appeal from orders affecting parental rights under the Juvenile Court Act). Appellate counsel provided proof of service of his motion

and a memorandum on respondent, and this court granted respondent the opportunity to file a response. Respondent failed to respond.

¶ 20 II. ANALYSIS

¶ 21 Appellate counsel seeks to withdraw as counsel, contending there are no meritorious claims for review. Counsel indicated he considered whether the trial court's determinations of unfitness and best interest were against the manifest weight of the evidence. Appellate counsel determined either argument would be frivolous and without merit. After reviewing the record, we agree with counsel and conclude there are no meritorious arguments to be considered on appeal.

¶ 22 A. Finding of Parental Unfitness

¶ 23 Parental rights may not be terminated without the parent's consent unless the trial court first determines, by clear and convincing evidence, the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Pursuant to section 1(D)(m)(ii) of the Adoption Act, a parent may be found unfit if she fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2022). Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007). This court has explained reasonable progress exists when a trial court

> "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain

custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

We have also emphasized " 'reasonable progress' is an 'objective standard.' " *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88 (quoting *L.L.S.*, 218 Ill. App. 3d at 461).

¶ 24 "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *Gwynne P.*, 215 Ill. 2d at 349. "A trial court's determination that a parent's unfitness has been established by clear and convincing evidence will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Id.* at 354.

¶ 25 The trial court found the State established respondent's unfitness by clear and convincing evidence because she failed to make reasonable progress. The court noted respondent's multiple incarcerations derailed her progress but also added that when she was not incarcerated, she still failed to comply with ordered services, such as counseling, drug testing, and substance abuse treatment.

¶ 26 Based on the evidence presented, we agree with appellate counsel any argument the trial court's finding of unfitness was against the manifest weight of the evidence would be meritless. The court's determination respondent failed to make reasonable progress toward the minors' return to her care during the relevant nine-month period is supported by the record and not against the manifest weight of the evidence.

¶ 27 B. Best Interest Determination

¶ 28 After a trial court finds a parent is 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). The trial court's best interest determination will not be reversed unless it is against the manifest weight of the evidence. *In re J.B.*, 2019 IL App (4th) 190537, ¶ 33. "A best-interest

determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the trial court should have reached the opposite result." *Id.*

¶ 29 At the best interest hearing, the State must prove by a preponderance of the evidence termination of parental rights is in the child's best interest. See *D.T.*, 212 Ill. 2d at 367. The trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act. See 705 ILCS 405/1-3(4.05) (West 2022). However, the court is not required to make a specific reference to each factor in its findings. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. These statutory 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)).

¶ 30 In this case, the evidence demonstrated the minors' needs were being met by their current relative placement and they had developed a bond with their caregiver. The minors expressed an interest in remaining with their caregiver, who was willing to adopt them. Furthermore, the minors remaining in their current placement avoided harm to them and provided stability and permanence.

¶ 31 Based on this evidence, we agree with appellate counsel any argument it was not in the minors' best interest to terminate respondent's parental rights would be meritless. The trial court's best interest findings were based on an appropriate consideration of the statutory factors. Accordingly, we conclude the court's best interest determination was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.