2024 IL App (5th) 240594-U

NOS. 5-24-0594, 5-24-0595, 5-24-0596 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ALEEHA T., ALYSSA T., and ALYSHA T., Minors	)	Appeal from Circuit Court of Madison County.
(The People of the State of Illinois, Petitioner-Appellee,	)	
v.	)	Nos. 19-JA-112, 19-JA-113, 19-JA-114
Ashley B., Respondent-Appellant).	)	Honorable Martin J. Mengarelli, Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Moore and Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence amply supported the circuit court's findings that respondent was unfit and that the minors' best interests required terminating her parental rights. As any contrary argument would be frivolous, we allow appointed counsel to withdraw and affirm the circuit court's judgment.

¶ 2 Respondent, Ashley B., appeals the circuit court's orders finding her an unfit parent and terminating her parental rights to Aleeha T., Alyssa T., and Alysha T. Her appointed appellate counsel has concluded that there is no reasonably meritorious argument that the circuit court erred in doing so. Consequently, she has filed a motion for leave to withdraw as counsel on appeal and a supporting memorandum. See *Anders v. California*, 386 U.S. 738 (1967). Counsel has notified respondent of her motion, and this court has provided her with ample opportunity to respond.

However, she has not done so. After considering the record on appeal and counsel's motion and supporting memorandum, we agree that there is no issue that could support an appeal. Accordingly, we grant counsel leave to withdraw and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2019, the State filed petitions alleging that the minors were neglected. Specifically, the State alleged that respondent had previously been found unfit and there had been no subsequent finding of fitness. Moreover, respondent had pending child-endangerment charges, the minors' father lacked stable housing and, after the minors were returned to him, he left them alone with respondent.

¶ 5 The court, finding probable cause to believe that the minors were neglected, removed them from their parents' custody, granting temporary custody to the Department of Children and Family Services. Following a hearing on November 12, 2019, at which neither parent appeared, the court found that the minors were neglected and that respondent was unfit.

¶ 6 Reports filed during the ensuing years showed that respondent only sporadically complied with service-plan directives to obtain mental-health and substance-abuse counseling. On multiple occasions she tested positive for marijuana and methamphetamines and frequently missed scheduled drug tests. She obtained housing and found a job, which she later quit.

¶ 7 On December 27, 2022, the State moved to terminate both parents' rights. The petition alleged that respondent, *inter alia*, failed to make reasonable efforts to correct the conditions that led to the minors' removal or reasonable progress toward their return during any nine-month period between August 18, 2020, and the present. The State later filed an amended petition reflecting that the father had made progress in some areas. Thus, the State recommended terminating respondent's parental rights while keeping the father's rights intact "for guardianship."

¶ 8 A hearing on the petition was set for March 14, 2024. Prior to the hearing, respondent's counsel informed the court that respondent had been at the courthouse earlier that day, apparently intending to sign directed consents for the minors. However, as the caseworker was preparing them, respondent left the courthouse. Counsel had since been unable to locate her.

¶ 9 Once the hearing began, Mekyla Price testified that she was a foster-care case manager for Brightpoint. She last heard from respondent the week before when the latter called to ask about the upcoming court date. Before that, she had not seen her since the previous September. Price explained that respondent sometimes cooperated with the agency, but when she did not "get the outcome she wanted," she became combative and thereafter did not stay in contact with the agency.

¶ 10 Respondent engaged "off-and-on" with a therapist who was also supposed to address her substance abuse issues during the sessions. Price rated respondent unsatisfactory for substance abuse, as she had been unable to maintain consistent sobriety and continued to test positive for methamphetamine.

¶ 11 Respondent had made no progress in her overall mental-health treatment and continued to become agitated when discussing the case. She had a home in Alton, but it had not passed a home safety check. Respondent was entitled to monthly visitation. However, the foster mother would allow weekly visitation which respondent inconsistently attended.

¶ 12 The court found respondent unfit for failing to make reasonable progress or reasonable efforts. The court then proceeded to the best-interests portion of the hearing.

¶ 13 Price testified that the minors had resided with their paternal aunt since the case began. They were bonded with her and appeared comfortable in their environment. Price had no safety concerns. She believed that uprooting the minors after such a long time would be detrimental. The

guardian *ad litem* opined that it would be in the minors' best interests to terminate respondent's parental rights, freeing them for guardianship by their aunt. The court so ordered.

¶ 14 Respondent filed a notice of appeal that was file-stamped April 29, 2024. However, the court noted that the envelope was postmarked April 11, 2024, and was sent unopened to the judge's office while he was out of town.

¶ 15 ANALYSIS

¶ 16 Appellate counsel concludes that there is no reasonably meritorious argument that the circuit court erred in finding respondent an unfit parent or in terminating her parental rights. We agree.

¶ 17 A proceeding to terminate a party's parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2022)) occurs in two stages. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must establish that the parent is "unfit to have a child" under one or more of the grounds in the Adoption Act. *In re D.T.*, 212 Ill. 2d 347, 352 (2004); see 750 ILCS 50/1(D) (West 2022). At the unfitness hearing, the State bears the burden of proving, by clear and convincing evidence, that the parent is unfit to have a child. See *In re D.W.*, 214 Ill. 2d 289, 315 (2005). Parental unfitness includes:

> "Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused *** or (ii) 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)(i), (ii) (West 2022).

¶ 18 The benchmark for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans

and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 215-17 (2001).

¶ 19 Here, the evidence amply supported the conclusion that respondent failed to make either reasonable efforts or reasonable progress. Other than one phone call about the upcoming hearing, respondent had not been in contact with the agency for more than six months. She came to the courthouse on the hearing date but left before it began. Price testified that respondent frequently became agitated and refused to cooperate with the agency when she did not get the outcomes she desired.

¶ 20 Respondent was inconsistent in attending mental-health and substance-abuse counseling, as evidenced by repeated positive tests for marijuana and methamphetamine. She did not consistently attend visits with the minors. She briefly held a job but quit and her home had not passed a safety check. Thus, while respondent attended some counseling and some visits, the evidence revealed a lack of consistent efforts or progress during the nearly four years the case was open.

¶ 21 Counsel further concludes that the evidence supported the court's finding that terminating respondent's parental rights was in the minors' best interests. Once a parent is found unfit, the trial court moves on to the second stage of termination proceedings, which involves a determination of whether it is in the minor's best interest to terminate parental rights. At this stage, the State must demonstrate, by a preponderance of the evidence, that the termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d at 366-67.

¶ 22 Here, the minors had been placed with a relative—their paternal aunt—since the case began. They were comfortable there and she could provide for their needs. The foster parent was

committed to continuing the guardianship. The guardian *ad litem* recommended terminating respondent's parental rights and allowing their current placement to continue. Under the circumstances, the court's finding that terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 23 Appellate counsel raises one additional issue: whether respondent received the ineffective assistance of counsel at the combined hearing. Parents in a termination of parental rights proceedings have a statutory right to the effective assistance of counsel. *In re Ca. B.*, 2019 IL App (1st) 181024, ¶ 41. We analyze a parent's ineffective assistance claim under the *Strickland* standard: the parent must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced his or her defense. *Id.* ¶ 42 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

¶ 24 Counsel states that she is unable to identify any examples of substandard representation. She further concludes, however, that in light of the overwhelming evidence as described above, respondent was not prejudiced. We agree. Respondent did not even attend the hearing, and the evidence overwhelmingly supported the court's findings that respondent was unfit and that the minors' bests interests required terminating her parental rights. It is difficult to imagine how better representation by counsel would have altered the court's conclusion.

¶ 25 CONCLUSION

¶ 26 As this appeal presents no issue of arguable merit, we grant counsel leave to withdraw and affirm the circuit court's judgment.

¶ 27 Motion granted; judgment affirmed.