2024 IL App (4th) 240880-U

NO. 4-24-0880

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2024
Carla Bender
4th District Appellate
Court, IL

In re P.S., a Minor	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Knox County
v.	)	No. 21JA32
Brooke Z.,	)	
Respondent-Appellant).	)	Honorable
	)	Curtis S. Lane,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Lannerd and Grischow 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 Respondent Brooke Z. appeals from the trial court's judgment terminating her parental rights to her minor child, P.S. (born in 2019). Respondent's court-appointed appellate counsel moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), arguing this appeal presents no issue of arguable merit for review. See *In re S.M.*, 314 Ill. App. 3d 682, 685-86 (2000) (holding *Anders* applies to termination of parental rights cases and providing the proper procedure to be followed by appellate counsel). For the reasons that follow, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Adjudication of Wardship

¶ 5 In August 2021, the State filed a single-count petition for adjudication of wardship, alleging that the minor was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)) in that the minor was subjected to an environment injurious to her welfare. The State alleged, among other things, that respondent: (1) gave birth to P.S. while incarcerated; (2) was adjudicated as an unfit parent to a different minor in a 2017 juvenile matter and her parental rights were terminated; and (3) was indicated due to exposing P.S. to "Substantial Risk of Physical Injury/Environment[ ] Injurious to Health and Welfare by neglect." The minor's biological father was also a party to these proceedings but is not the subject of this appeal. Following a shelter care hearing, the trial court found probable cause to support the allegations of neglect and placed temporary custody and guardianship with the Illinois Department of Children and Family Services (DCFS).

¶ 6 At a subsequent hearing, the State amended the allegations in the petition, removing a paragraph alleging the number of child welfare investigations respondent had been the subject of. Respondent then stipulated to the amended petition. The trial court admonished respondent, and the State provided a factual basis. The court determined P.S. was neglected and made her a ward of the court. Custody of the minor remained with the guardianship administrator of DCFS.

¶ 7 B. Petition for Termination of Parental Rights

¶ 8 In December 2022, the State filed a petition to terminate respondent's parental rights. The petition alleged that respondent was an unfit parent under the Adoption Act (750 ILCS 50/1(D) (West 2022)) in that she failed to (1) make reasonable efforts to correct the conditions serving as the basis of the removal of the minor during the relevant nine-month period (January 4, 2022, to October 4, 2022) (*id.* § 1(D)(m)(i)), (2) make reasonable progress toward the return of the

minor during the relevant nine-month period (*id.* § 1(D)(m)(ii)), and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (*id.* § 1(D)(b)).

¶ 9 1. *The Fitness Hearing*

¶ 10 In March 2024, the trial court conducted a fitness hearing. At the time of the hearing, respondent was in the custody of the Iowa Department of Corrections (DOC), so her attorney moved for a continuance so that she might appear. The State objected, and the court denied the motion for a continuance.

¶ 11 Tara Wilder testified that she was assigned as the caseworker from January 2022 through July 2022. Respondent's service plan required that she complete a substance abuse assessment; participate in mental health services, domestic violence counseling, and parenting classes; comply with drug screens; and maintain employment along with stable and appropriate housing. Respondent failed to complete any of the services and was either homeless or incarcerated throughout the life of the case. Respondent sporadically attended visitation with the minor until DCFS required drug testing prior to commencing the visits. Once drug tests became a condition of visitation, respondent stopped attending visitation. As of the fitness hearing, respondent had not had any contact with the minor since she stopped attending visitation.

¶ 12 Karen Moore was the caseworker from July 2022 through October 2022. The services respondent was required to complete while Moore was the caseworker had not changed from those in place when Wilder was the caseworker. Respondent failed to complete any services, except for a substance abuse assessment. Respondent also completed one drug screen that tested positive for methamphetamine.

¶ 13 The trial court found that the minor was no closer to being returned to respondent's care than when the case began and determined respondent was unfit based on the grounds articulated in the State's petition.

¶ 14 2. *The Best Interest Hearing*

¶ 15 A best interest hearing ensued, at which respondent appeared via Zoom while in the custody of DOC. Wilder again testified, stating she was the caseworker assigned to the case from January 2022 until Moore took over the case and she resumed working on the case after Moore. The minor had been in foster care for over two and a half years and had been in the current placement for almost two years—half of the minor's life. Respondent had been incarcerated in Iowa for a year leading up to the hearing due to a drug offense. Respondent had stopped attending visitation prior to her incarceration and did not have visitation while incarcerated. Wilder was unable to schedule visitation with respondent while she was incarcerated due to an inability to cross state lines with the minor and DOC being uncooperative. When respondent moved from incarceration to a halfway house, she did not reach out to DCFS. Wilder visited the foster home monthly. There were no issues with the home and the minor referred to the foster parents as "Mom" and "Dad". The foster parents provided for her physical and emotional needs, and P.S. was bonded to her foster parents and foster siblings. P.S. was "thriving" in the placement, and the foster parents expressed a desire to adopt P.S. and give her permanence.

¶ 16 The foster mother testified that she and her husband were willing to adopt P.S. The minor was bonded with the other children in the home and the extended families of the foster parents.

¶ 17 Respondent testified that she had been in the custody of DOC for over a year for possession of methamphetamine. She was currently in custody and residing in a halfway house.

She was employed and seeking additional employment to increase her income in order to better care for the minor when released from custody. The last time she could recall having contact with P.S. was two years prior.

¶ 18 The trial court considered the statutory best interest factors and found that they favored the termination of respondent's parental rights.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Appellate counsel now moves to withdraw pursuant to *Anders* and argues that respondent's appeal presents no potentially meritorious issue for review. See *S.M.*, 314 Ill. App. 3d at 685-86. Counsel states he has reviewed the record on appeal and has identified two potential issues for review: (1) whether the trial court's determination that respondent was unfit was against the manifest weight of the evidence and (2) whether the court's determination that termination of respondent's parental rights was in the best interest of the minors was against the manifest weight of the evidence. Counsel provided respondent notice of the motion to withdraw at her residential address appearing in the record, and this court followed with its own notice. Respondent has not filed a response. After reviewing the record and appellate counsel's memorandum, we agree with counsel that this appeal presents no issue of potential merit and therefore grant the motion to withdraw and affirm the court's judgment.

¶ 22 A. Unfitness Finding

¶ 23 Section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2022)) provides for a two-step process to involuntarily terminate parental rights. The State must first prove by clear and convincing evidence that the respondent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re N.G.*, 2018 IL 121939, ¶ 28.

¶ 24 In this case, the trial court determined respondent was unfit on the multiple bases alleged in the State's petition. However, a "parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence." *In re D.C.*, 209 Ill. 2d 287, 296 (2004). Here, we focus on the ground that respondent failed to make reasonable progress toward the return of the minor during the relevant nine-month period pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2022)).

> "Reasonable progress is examined under an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent. [Citation.] The benchmark for measuring a parent's reasonable progress under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known that would prevent the court from returning custody of the child to the parent. [Citation.] Reasonable progress exists when the trial court can conclude that progress being made by a parent to comply with directives given for the return of the minor is sufficiently demonstrable and of such a quality that the trial court will be able to order the minor returned to parental custody in the near future." *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17.

¶ 25 The trial court is in a superior position to observe witnesses and evaluate their credibility. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). Accordingly, the court's findings regarding parental unfitness are afforded great deference and will not be reversed unless against the manifest weight of the evidence. *Id.* "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 26 Respondent in this case failed to complete most of the court-ordered services during the relevant time period. The record shows that respondent completed the substance abuse assessment and only one drug test, and that test was positive for methamphetamine. Respondent had not been attending visitation and was incarcerated or homeless during the life of this case. Although respondent may have been unable to engage in services due to her incarceration, our supreme court has made clear that incarceration does not toll the relevant time period during which reasonable progress is to be made. *In re J.L.*, 236 Ill. 2d 329, 343 (2010).

¶ 27 In sum, respondent failed to make reasonable progress toward the return of the minor during the relevant nine-month period and the trial court did not err in finding respondent was not making progress toward having the minor returned to her custody in the near future. Therefore, it would be frivolous to argue that the court's unfitness finding was against the manifest weight of the evidence.

¶ 28 B. Best Interest Determination

¶ 29 If a trial court finds a parent to be unfit, it then determines whether the best interest of the child requires that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 352 (2004). At the best interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re C.P.*, 2019 IL App (4th) 190420, ¶ 71. In reaching a best interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors, which are derived from section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)):

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties;

(4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (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 and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." (Internal quotation marks omitted.) *In re J.B.*, 2019 IL App (4th) 190537, ¶ 32.

¶ 30 "The court's best interest determination [need not] contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Additionally, a trial court "may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being." *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004). We afford great deference to the trial court's best interest finding due to the court's superior position in viewing the witnesses and judging their credibility. *J.B.*, 2019 IL App (4th) 190537, ¶ 33. We will not disturb the trial court's judgment at this stage unless it is against the manifest weight of the evidence. *Id.*

¶ 31 In this case, the minor had been in foster care for the majority of her life, and respondent admitted that she had not seen or communicated with the minor in the two years prior to the hearing—half of the minor's life. The foster parents provided for the safety, shelter, and general welfare of the minor, while respondent was unable to do so. Familiarity, continuity of affection, consideration of the least disruptive placement, and permanence all favored termination. The minor was bonded with her foster parents and her foster family, while she essentially had no

relationship with respondent. Having reviewed the record, we agree with counsel that there is no arguable issue of merit that could be advanced challenging the trial court's best interest finding.

¶ 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.