2024 IL App (3d) 240428-U

Order filed November 15, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

In re ADOPTION OF G.B.C.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
a Minor	)	Will County, Illinois,
	)	
(Hope McMurry-Schoon and Thomas Schoon,	)	
	)	
Petitioners-Appellees,	)	Appeal No. 3-24-0428
	)	Circuit No. 22-AD-88
v.	)	
	)	
Justin Cox,	)	Honorable
	)	Derek W. Ewanic,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Brennan and Albrecht concurred in the judgment.

ORDER

¶ 1 *Held*: We find there are no issues of arguable merit to be raised in this appeal. Thus, we affirm the trial court's judgment and allow respondent's appointed counsel to withdraw.

¶ 2 Respondent, Justin Cox, appeals from the trial court's judgment granting an adoption petition filed by petitioners, Hope McMurry-Schoon and Thomas Schoon, to adopt G.B.C. Respondent's appellate counsel has moved to withdraw under *Anders v. California*, 386 U.S. 738

(1967), stating he has read the record and concluded there exists no arguable merit to this appeal. See *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (*Anders* applies in cases where the termination of parental rights is at issue). Counsel has supported 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 and advised respondent he had 21 days to file a response. That time has passed, and respondent has not responded. For the following reasons, we agree the potential issues identified by counsel lack arguable merit. Therefore, we grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 G.B.C. was born on March 14, 2020. Respondent is G.B.C.'s father. G.B.C.'s mother consented to her adoption and is no longer a party to this action. In November 2019, respondent was arrested and charged with, among other offenses, aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2018)) and domestic battery (a Class 4 felony based on his background) (720 ILCS 5/12-3.2(a)(2), (b) (West 2018)), in Will County case No. 21-CF-2149. The victim of the domestic battery was G.B.C.'s mother. Respondent pleaded guilty to those offenses and was serving concurrent three-year prison sentences when G.B.C. was born. Petitioners were appointed as G.B.C.'s guardians in August 2020, and G.B.C. has been in their care ever since.

¶ 5 In October 2022, petitioners filed a verified petition to adopt G.B.C., which they amended days later. In the amended petition, petitioners alleged respondent (1) had a history of drug abuse; (2) had "a long history of criminal offenses"; (3) was recently released from prison and within six months was again incarcerated for armed robbery; (4) was "likely to remain incarcerated for many years"; (5) had failed to provide support for G.B.C. since her birth; and (6) had otherwise failed to

maintain involvement in G.B.C.'s life or make substantial efforts toward reunification. The court appointed a guardian *ad litem* (GAL) for G.B.C.

¶ 6 In March 2024, after respondent's parentage was established[1], the trial court gave petitioners leave to file a "formal petition" to terminate respondent's parental rights. In their petition to terminate, petitioners alleged respondent was unfit on five grounds: (1) he abandoned G.B.C. (750 ILCS 50/1(D)(a) (West 2022)), by (a) failing to maintain a reasonable degree of interest, concern, or responsibility for her welfare (*id.* § 1(D)(b)), and (b) deserting G.B.C. for more than three months next preceding the adoption petition (*id.* § 1(D)(c)); (2) he was depraved, in that he had been convicted of three or more felonies with at least one conviction within five years of the petition (*id.* § 1(D)(i)); (3) he demonstrated habitual drunkenness, in that he had several alcohol offenses and committed his most recent felony while intoxicated (*id.* § 1(D)(k)); (4) he failed to demonstrate a reasonable degree of interest, concern, or responsibility for G.B.C.'s welfare during the first 30 days after her birth (*id.* § 1(D)(l)); and (5) he failed to provide G.B.C. with adequate food, clothing, or shelter although he was employed and financially able to do so until his most recent incarceration (*id.* § 1(D)(o)).

¶ 7 At the hearing on the allegations of unfitness, petitioners called respondent as an adverse witness. As to the allegation of depravity, the trial court took judicial notice of respondent's five felony convictions between 2018 and 2022. We likewise take judicial notice of these matters. See *Asher Farm Limited Partnership v. Wolsfeld*, 2022 IL App (2d) 220072, ¶¶ 31-32 (taking judicial notice of case information from the circuit court clerk's website).

[1]Respondent was initially named in the adoption petition as Gabriella's putative father. His paternity was later established by deoxyribonucleic acid testing.

¶ 8 In July 2018, respondent pleaded guilty to aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a), (d)(1)(A), (d)(2)(B) (West 2018)), a Class 2 felony, in Will County case No. 18-CF-788. He was sentenced to, among other things, two years of intensive probation. In June 2019, respondent pleaded guilty to aggravated domestic battery (strangulation) (720 ILCS 5/12-3.3(a-5), (b) (West 2018)), a Class 2 felony, in Will County case No. 19-CF-210. His intensive probation on the 2018 case was revoked (by admission) simultaneously, and he was sentenced to concurrent two-year probation terms. In January 2020, respondent pleaded guilty to aggravated battery of a peace officer and domestic battery in Will County case No. 19-CF-2149. As noted, he received concurrent three-year sentences for those offenses. In April 2023, he pleaded guilty to aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2022)), a Class 1 felony, in Will County case No. 22-CF-168, and he was sentenced to 10 years in prison. We also take judicial notice that respondent is currently in work-release custody, and his mandatory supervised release date is October 3, 2025. See *People v. Ware*, 2014 IL App (1st) 120485, ¶ 29 (appellate court may take judicial notice of information on the Illinois Department of Corrections website).

¶ 9 After petitioners rested, the trial court denied respondent's request for a directed finding on all alleged grounds of unfitness. Respondent then testified in his own behalf. Respondent's attorney told the court she was going to call respondent's father, John Cox, but after a short recess told the court respondent rested. After arguments, the court found respondent unfit on each of the five grounds alleged by petitioners. In ruling, the court noted respondent was not a credible witness due to various inconsistencies in his testimony. It set a hearing to determine whether it was in G.B.C.'s best interests to terminate respondent's parental rights and allow the adoption.

¶ 10 At the best-interests hearing, the court heard testimony from petitioners, the GAL, John, and respondent. It also reviewed a home study filed during the proceedings. The court found it was

in G.B.C.'s best interests to terminate respondent's parental rights and allow petitioners to adopt G.B.C. Thus, it entered a judgment granting petitioner's adoption petition.

¶ 11 Respondent appealed, and counsel was appointed to represent him.

¶ 12 II. ANALYSIS

¶ 13 As noted, counsel has moved to withdraw under *Anders*. In his supporting memorandum, he identified two potential issues for review: (1) whether the trial court's finding that respondent demonstrated habitual drunkenness in the year immediately preceding the unfitness allegation was against the manifest weight of the evidence, and (2) whether trial counsel was ineffective by failing to call John during the unfitness portion of the proceedings.

¶ 14 Counsel first addresses the trial court's finding that respondent was unfit on the grounds of habitual drunkenness. The trial court based its finding on respondent's 2018 aggravated DUI conviction, respondent's admission that he drank daily before cutting down to weekly, and the fact respondent's most recent conviction (for aggravated robbery) was the result of respondent's alcohol abuse upon learning the court had allowed petitioners to adopt his son, G.B.C.'s biological brother, L.C.

¶ 15 Courts employ a two-step process when an adoption petition alleges that one of the child's parents is unfit. *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 195. The court must first determine whether the parent is unfit under any one of the grounds stated in section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2022)). If the court determines the parent is unfit, it considers whether the adoption is in the child's best interests. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 195.

¶ 16 Petitioners had the burden to prove respondent's unfitness by clear and convincing evidence. *Id.* ¶ 196. On review, we give great deference to the trial court's unfitness determination

because the trial court is in a superior position to view and evaluate the evidence and assess the witnesses' credibility. *Id.* Thus, we will reverse a finding of unfitness only if it is against the manifest weight of the evidence, that is, if the opposite conclusion is clearly apparent. *Id.*

¶ 17 Counsel asserts a colorable argument can be made that the trial court's habitual drunkenness finding was against the manifest weight of the evidence. Section 1(D)(k) of the Act states a parent is unfit if the parent demonstrates "[h]abitual drunkenness *** for at least one year immediately prior to the commencement of the unfitness proceeding." 750 ILCS 50/1(D)(k) (West 2022). On this ground, petitioners were required to prove that—in the year preceding their adoption petition, that is, from October 7, 2021, to October 7, 2022—respondent "(1) had a fixed habit of drinking to excess, and (2) used alcohol so frequently as to show an inability to control the need or craving for it." *In re J.J.*, 201 Ill. 2d 236, 245-47 (2002).

¶ 18 At the unfitness hearing, respondent testified he drank "heavily" or almost every day before his November 2019 arrest. After his release in April 2021, he cut down his drinking to once per week. Respondent acknowledged that his convictions resulted from his alcohol use. He also testified, however, that he had never been under the influence at work or when around his children. And he sought at least some help with his alcohol problem both while incarcerated and while free.

¶ 19 We agree with counsel that the evidence failed to support the finding of habitual drunkenness. Our initial focus is the one-year period immediately prior to the adoption petition, from October 7, 2021, to October 7, 2022. *Id.* at 245. As counsel points out, respondent was incarcerated—making it impossible for him to drink any alcohol—for more than eight months in the year immediately prior to the adoption petition. Moreover, while respondent acknowledged weekly drinking during the four months he was not incarcerated, there was no evidence presented that he had a fixed habit of drinking to excess or that he drank so frequently as to show an inability

to control the need or craving for it. *Id.* at 247. Thus, we find the trial court's habitual drunkenness finding was against the manifest weight of the evidence.

¶ 20 Nevertheless, counsel states an appeal based on that argument would be wholly frivolous, because the manifest weight of the evidence supported the trial court's findings that respondent was unfit on the remaining four grounds. See *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005) (proof of any one ground of unfitness by clear and convincing evidence is sufficient to terminate parental rights). We note here that counsel simply states the evidence is sufficient to sustain the remaining unfitness findings. Counsel did not explain how he reached that conclusion. We advise counsel to provide a complete explanation of his reasons for withdrawal in the future. See *S.M.*, 314 Ill. App. 3d at 685 (after identifying an arguably meritorious issue, counsel must sketch an argument and explain why counsel believes it is frivolous). In any event, we have a duty under *Anders* to review the record and determine whether this appeal is wholly frivolous. *Anders*, 386 U.S. at 744. The evidence presented at the unfitness hearing supported the trial court's findings on at least one of the remaining grounds.

¶ 21 For example, the trial court found petitioners proved respondent's depravity. See 750 ILCS 50/1(D)(i) (West 2022)). In this context, depravity is "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *In re P.J.*, 2018 IL App (3d) 170539, ¶ 13. Depravity may be shown by a parent's series of acts or course of conduct that indicates a moral deficiency and an inability to conform to accepted morality. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 200. Under section 1(D)(i) of the Act, "[t]here is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State ***; and at least one of these convictions took place within 5 years of the filing of the petition." 750 ILCS 50/1(D)(i) (West 2022). Once the presumption is established, the parent may

rebut it by presenting evidence showing that he is not depraved despite his convictions. *P.J.*, 2018 IL App (3d) 170539, ¶ 13. If the parent presents such evidence, the presumption is removed, and the trial court determines the issue based on the evidence presented. *Id.* In doing so, the trial court must closely scrutinize the parent's character and credibility, and we must give deference to the trial court's decision. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 201.

¶ 22 The record establishes respondent had five felony convictions between 2018 and 2022. Four of those convictions, in Will County case Nos. 18-CF-788, 19-CF-210, and 19-CF-2149, all occurred within the five years preceding the adoption petition. See *id.* ¶ 200 (depravity must exist *at the time of the petition*). Respondent incurred the fifth felony conviction, in Will County case No. 22-CF-168, nine months before petitioners filed their "formal" petition to terminate respondent's parental rights. Thus, petitioners established a rebuttable presumption of depravity. 750 ILCS 50/1(D)(i) (West 2022).

¶ 23 Respondent presented some evidence to rebut the presumption. He testified that he lived with his father and maintained steady contact with his other children. When he was not incarcerated, he had a steady job as a heavy machine operator, and he had unsupervised visitation with his other children. After his release from prison in April 2021, he drank alcohol much less frequently, "looked into" going to Alcoholics Anonymous, participated in a drug and alcohol evaluation, and was set to begin addiction recovery classes.[2] Respondent never drank before or during work. He never received any complaints about his behavior at work or with his other children. At the time of the unfitness hearing, he was enrolled in a nine-month drug and alcohol

[2]Respondent testified both that he scheduled classes but was not able to start them before his January 2022 arrest and that he attended classes when his work scheduled permitted.

program at his prison. He was also enrolled in other programs that could result in substantially reduced prison time.

¶ 24 Once this evidence was admitted, the trial court was required to decide the issue based on the evidence presented, closely scrutinizing the respondent's character and credibility. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 201. The record amply supports a finding that respondent engaged in a series of acts or a course of conduct showing that he had a moral deficiency and an inability to conform to accepted morality. *Id.* ¶ 200. Between 2018 and 2022, respondent obtained five felony convictions, demonstrating a pattern of reoffending, with the offenses becoming increasingly violent and dangerous. In July 2018, he pleaded guilty to aggravated DUI and was sentenced to two years of intensive probation. However, less than one year into his probation term, in February 2019, he was arrested for aggravated domestic battery. In June 2019, he pleaded guilty to that offense but nevertheless received a second chance at probation. However, he did not satisfactorily complete those probation terms. Instead, in November 2019, he was arrested for domestic battery and aggravated battery of a peace officer. In January 2020, he pleaded guilty to those offenses and was sentenced to concurrent three-year prison terms, with his probation in case No. 18-CF-788 and 19-CF-210 terminating unsatisfactorily. Respondent was released from prison in April 2021.

¶ 25 About nine months later, in January 2022, respondent was arrested for aggravated robbery, among other offenses. He pleaded guilty to that offense in April 2023 and was sentenced to 10 years in prison. At the unfitness hearing, respondent explained the circumstances of that offense. He testified that earlier that day, he learned the court had allowed petitioners to adopt L.C., which was a result he did not expect. Respondent became "emotionally overwhelmed," began drinking alcohol with a friend, and decided to rob three individuals, while defendant and his friend indicated they were armed with a firearm or other dangerous weapon. Respondent's alcohol-fueled criminal

response to learning of L.C.'s adoption—which followed four alcohol-fueled felony convictions in a span of two years—supported a finding that respondent was unable to conform to accepted morality.

¶ 26 While respondent presented some evidence that he attempted to conform to accepted morality between April 2021 and January 2022 (the nine-month period after his release from prison), the trial court found respondent lacked credibility and gave little weight to his testimony. We will not disturb this determination. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 196. The evidence supported the trial court's finding that respondent was unfit based on depravity. Therefore, we defer to that conclusion. *Id.* ¶ 201.

¶ 27 We likewise find that any challenge to the trial court's best-interests finding would lack arguable merit. As noted, once a parent is found unfit, the issue becomes whether it is in the child's best interests to terminate the parent's parental rights and allow the adoption. *Id.* ¶ 195. At this stage, the court must focus on 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). When making a best-interests determination, the court should consider the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachment, 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 needs 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 2022). We will reverse a best-interests finding only if it is against the manifest weight of the evidence. *In re N.B.*, 2019 IL App (2d) 180797, ¶ 43.

¶ 28 The evidence at the best-interests hearing showed G.B.C. had lived with petitioners since August 2020, when she was only five months old. Petitioners had already adopted L.C., and they all lived in a spacious home in a nice, safe, tight-knit neighborhood in Ottawa. G.B.C. and L.C. had their own bedrooms and shared a playroom. G.B.C. had adjusted well to the home, and she and L.C. had developed a strong bond. G.B.C. and L.C. were "inseparable." They played well together, protected each other, helped each other, and shared with each other. In addition, G.B.C. had formed a strong bond with petitioners. Hope and G.B.C. were "attached at the hip," and G.B.C. often protested when Hope would leave the house because G.B.C. did not want her to leave. She ran to Thomas when he got home from work, saying "daddy's home." Petitioners were able to meet all of G.B.C.'s needs, such as food, shelter, and healthcare, and satisfy many of G.B.C.'s wants. Petitioners protected G.B.C. and provided her with a safe, loving, and stable environment, something G.B.C.'s mother and respondent could not provide.

¶ 29 We acknowledge respondent and his father believed it important for G.B.C. to maintain a relationship with the paternal side of her family. And we further note respondent's testimony that he can remain out of trouble and provide for G.B.C.'s necessities upon his release. However, at this stage of the proceedings, the focus is G.B.C.'s welfare and whether adoption would improve her future financial, social, and emotional atmosphere. *D.M.*, 336 Ill. App. 3d at 772. And respondent's interests must yield to G.B.C.'s interest in a stable, loving home life. See *D.T.*, 212 Ill. 2d at 364. Respondent is currently in work-release custody and will continue to be in custody until October 3, 2025, more than 10 months from now, at which point he may still not be positioned

to care for G.B.C. Based on the evidence presented, the trial court reasonably concluded it was in G.B.C.'s best interests to terminate respondent's parental rights and allow petitioners to adopt G.B.C. An argument to the contrary lacks arguable merit.

¶ 30 Counsel also identified a second potential issue for review. He considered whether respondent's trial counsel was ineffective in declining to call respondent's father to testify at the unfitness hearing despite initially saying she would.

¶ 31 We apply the familiar *Strickland* framework (*Strickland v. Washington*, 466 U.S. 668 (1984)) to claims of ineffective assistance of counsel. To prevail, the respondent must show counsel's performance was (1) deficient and (2) prejudicial. *In re A.P-M.*, 2018 IL App (4th) 180208, ¶ 39. An attorney's performance is deficient when it falls below an objective standard of reasonableness. *Id.* ¶ 40.

¶ 32 We have reviewed the record and agree with appointed counsel's assessment that trial counsel's performance did not fall below an objective standard of reasonableness. *Id.* Trial counsel effectively advocated respondent's position throughout both the unfitness hearing and best-interests hearing. And as to a potential claim that counsel was ineffective when she declined to call John as a witness, we agree such an argument would be frivolous for a more fundamental reason: any such claim would be frustrated by the fact that it was not asserted in the trial court. Because the claim was not raised in the trial court, the record is inadequate to evaluate counsel's strategic decision (see *People v. West*, 187 Ill. 2d 418, 432-33 (1999)) or any resulting prejudice. See *People v. Kirklin*, 2015 IL App (1st) 131420, ¶ 127.

¶ 33 III. CONCLUSION

¶ 34 After reviewing the record, counsel's motion to withdraw, and counsel's memorandum in support, we agree with counsel that this appeal presents no issues of arguable merit. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 35 Motion granted; affirmed.