NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 240766-U

NOS. 4-24-0766, 4-24-0767 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 11, 2024
Carla Bender
4th District Appellate
Court, IL

In re M.M. and E.N., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	Nos. 22JA138
v.	)	22JA139
Amanda M.,	)	
Respondent-Appellant).	)	Honorable
	)	Francis M. Martinez,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: (1) We affirm the trial court's judgment terminating respondent's parental rights to M.M., concluding (a) the court did not err in relying on multilevel hearsay when determining respondent was an unfit parent and (b) the court's determination respondent was an unfit parent was not against the manifest weight of the evidence.

(2) We grant appellate counsel's motion to withdraw and affirm the trial court's judgment terminating wardship of E.N., concluding no meritorious issues could be raised on appeal.

¶ 2 In October 2023, the State filed a motion to terminate the parental rights of respondent, Amanda M., to her minor child, M.M. (born August 2017). Following the fitness and best interest hearings, the trial court granted the State's motion and terminated respondent's parental rights to M.M. in Winnebago County case No. 22-JA-138. M.M.'s father, James R., is not a party to this appeal. Respondent appeals, arguing (1) the court violated her due process rights by

relying solely on multilevel hearsay when determining she was an unfit parent and (2) the court's determination she was an unfit parent was against the manifest weight of the evidence.

¶ 3 On April 17, 2024, the trial court terminated wardship of respondent's other minor child, E.N. (born October 2011), in Winnebago County case No. 22-JA-139. Custody and guardianship of E.N. was awarded to E.N.'s father, Kyle N., who is not a party to this appeal. Respondent appealed, and counsel was appointed to represent her. Appellate counsel filed a motion for leave to withdraw and a supporting brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), contending he can raise no meritorious issues on appeal.

¶ 4 As the two cases involving respondent's children involve the same parties and subject matter, we have consolidated them for appeal.

¶ 5 For the reasons that follow, we grant appellate counsel's motion to withdraw and affirm the trial court's judgments terminating the wardship of E.N. and terminating respondent's parental rights to M.M.

¶ 6 I. BACKGROUND

¶ 7 In March 2022, the State filed petitions for adjudication of wardship as to M.M. and E.N., alleging they were neglected in that their environment was injurious to their welfare pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)). The petitions alleged respondent's mental health issues prevented her from properly parenting. Respondent was appointed counsel, and after the trial court admonished respondent on the State's petitions, she waived her right to a shelter care hearing. The court accepted respondent's admission, found there was probable cause for the petitions, and granted temporary custody and guardianship of M.M. to the Illinois Department of Children and Family Services (DCFS). When DCFS took temporary custody of M.M., it did not take temporary custody of E.N. because E.N.

was placed in the custody of his father, Kyle N. The court ordered custody and guardianship of E.N. to continue with Kyle N. Both cases were then set for an adjudicatory hearing.

¶ 8 On the day of the adjudicatory hearing, respondent and Kyle N. stipulated to the contents of the State's petition and waived their right to a hearing. The trial court then entered an order finding M.M. and E.N. were neglected pursuant to the Juvenile Court Act. *Id.* The parties also agreed, in lieu of a dispositional hearing, respondent was unfit or unable, but not unwilling, to care for both M.M. and E.N. and Kyle N. was fit, willing, and able to care for E.N. Both respondent and Kyle N. would be ordered to cooperate with all services DCFS recommended. The court entered a dispositional order consistent with the agreement in the case involving M.M. However, no dispositional order was entered in the case involving E.N.

¶ 9 A. Termination of Respondent's Parental Rights to M.M.

¶ 10 On October 23, 2023, the State filed a petition to terminate respondent's parental rights to M.M. pursuant to the Adoption Act (750 ILCS 50/1 *et seq.* (West 2022)). The State's petition alleged:

> "The respondent mother, Amanda M[.], is an unfit person to have a child in that:
>
> COUNT 1:
>
> She has failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, during a (9) nine-month period following the minor being adjudicated neglected or abused, to wit 01/20/2023 to 10/20/2023. 750 ILCS 50/1(D)(m)(i) [(West 2022)].
>
> COUNT 2:
>
> She has failed to make reasonable progress toward the return of the child to the parent, during a (9) nine-month period following the minor being adjudicated

neglected or abused, to wit 01/20/2023 to 10/20/2023. 750 ILCS 50/1(D)(m)(ii) [(West 2022)].

COUNT 3:

She has failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) [(West 2022)].

COUNT 4:

She failed to protect the minor from conditions within the environment injurious to the child's welfare. 750 ILCS 50/1(D)(g) [(West 2022)]."

The trial court set the matter for a hearing on the State's petition to terminate. The fitness portion of the hearing occurred over two days—January 10, 2024, and March 19, 2024—and the best interest portion occurred on May 2, 2024. Because respondent's arguments relate solely to the fitness portion of the hearing, we discuss only those facts necessary to understand her contentions on appeal.

¶ 11 1. *Fitness Hearing*

¶ 12 At the beginning of the fitness hearing, the State requested the trial court take judicial notice of the following: (1) the neglect petition filed March 25, 2022, (2) the emergency temporary custody order filed March 28, 2022, (3) the temporary custody order filed April 6, 2022, (4) the adjudicatory order filed July 15, 2022, (5) the dispositional order filed January 11, 2023, and (6) the permanency review orders filed May 4, 2023, and October 20, 2023. The State then offered into evidence a certified copy of the indicated packet, without objection. Following the admission of the indicated packet, the State presented testimony from Bethany Dunaj.

¶ 13 a. Direct Examination of Bethany Dunaj

¶ 14 Bethany Dunaj, a child welfare specialist with DCFS, was assigned to respondent's case in January 2023. Respondent's child, M.M., was taken into care because of "concerns about [respondent's] mental health and psychotic behavior." After M.M. was taken into care, an integrated assessment was prepared. This integrated assessment was used to determine what services respondent needed to complete, as part of her service plans, in order to have M.M. returned to her custody. Following the completion of the integrated assessment, service plans were created every six months. Respondent was assigned the following tasks: visitation, cooperation, mental health services, substance abuse services, parenting classes, domestic violence education, medical services, and habilitation services. Throughout Dunaj's time as the caseworker, Dunaj informed respondent she needed to complete the tasks.

¶ 15 Dunaj testified about respondent's progress in completing services. Respondent was recommended for individual counseling due to mental health concerns. However, respondent only engaged in individual counseling for a brief period between March to September 2023 and never reengaged. Respondent completed a domestic violence assessment and was referred to domestic violence services. Although respondent engaged in these services, she never successfully completed them. Throughout the pendency of the case, respondent consistently tested positive for tetrahydrocannabinol (THC). Additionally, there were concerns about respondent taking her prescribed medication consistently due to irregularities in her urinalyses. Respondent completed a substance abuse assessment and was recommended to complete a substance abuse program. However, respondent was unsuccessfully discharged from her substance abuse program for lack of attendance. Dunaj was never able to refer respondent to parenting classes due to concerns about her sobriety. Additionally, there were concerns about respondent's behavior during visits with M.M., such that visitation was reduced in April 2023. Visitation was then suspended the next

month due to increased behaviors by M.M. following visits with respondent. Respondent's visitation with M.M. was never reinstated. Overall, Dunaj stated, "There are still significant safety concerns present in this case" because respondent had not successfully completed services.

¶ 16 During the State's direct examination of Dunaj, the following exhibits were admitted without objection: the integrated assessment dated September 22, 2022, and the service plans from April 2022, September 2022, March 2023, and September 2023.

¶ 17 b. Cross-Examination of Bethany Dunaj

¶ 18 Dunaj acknowledged respondent submitted to urinalysis following one visit where there were concerns respondent may have been under the influence. However, Dunaj could not recall the results of the urinalysis. In September 2023, M.M.'s therapist originally indicated M.M. was ready to reengage in visitation with respondent. However, the therapist only made this statement because she was under the impression visitation between respondent and M.M. was required by DCFS. After being informed visitation was not required, M.M.'s therapist retracted her statement. According to Dunaj, M.M.'s therapist still had concerns about M.M. resuming visits with respondent at that point. From December 2022 to May 2023, respondent was involved in individual and group counseling at Remedies. Throughout the pendency of the case, respondent was treated by the same psychiatrist for medication management. In July 2023, respondent's physiatrist reported respondent was taking her medication as prescribed and consistent in attending her medication management appointments. Respondent did engage in substance abuse treatment in August 2023 but was unsuccessfully discharged in November 2023 for inconsistent attendance. When asked, Dunaj indicated she believed respondent was still using substances because "[s]he had consistently tested positive for THC and she was recommended for substance abuse services." Further, Dunaj acknowledged respondent had obtained a provisional medicinal marijuana card.

¶ 19 c. Trial Court's Findings

¶ 20 After taking the matter under advisement, the trial court issued its oral ruling as to parental fitness on May 2, 2024. The court found the State met its burden of proof as to all four counts alleged in the petition to terminate parental rights. With respect to counts I through III, the court noted respondent was unsuccessfully discharged from substance abuse services, unable to complete parenting education due to her lack of sobriety, and never progressed to unsupervised visitation with M.M. As to count IV, the State admitted a copy of the indicated packet, which provided the circumstances surrounding M.M. being taken into care. Respondent provided no evidence to contradict this evidence.

¶ 21 2. *Best Interest Hearing*

¶ 22 Immediately following its oral ruling on parental fitness, the trial court proceeded to a best interest hearing. The court, at the State's request, took judicial notice of the best interest report and its unfitness finding. After testimony from Dunaj, the court found by a preponderance of the evidence it was in M.M.'s best interest respondent's parental rights be terminated.

¶ 23 B. Termination of E.N.'s Wardship

¶ 24 There was no petition to terminate respondent's parental rights to E.N. Instead, on April 17, 2024, the State requested the trial court "clos[e] this case" and enter an order "finding that [Kyle N.] remains fit, willing, and able, and that he continues to have guardianship and custody." In addition, the State noted, "There is a family case so any modifications that need to be made can be done through that family case." With agreement from the guardian *ad litem*, the court entered the following order:

> "IT IS HEREBY ORDERED that Wardship in the within cause is terminated and all proceedings herein closed.

DCFS is hereby discharged.

Other: Mother, Amanda M[.] remains unfit. Father, Kyle N[.] remains fit, willing, and able. Guardianship and custody of [E.N.] remains with Kyle N[.]"

¶ 25 C. Respondent's Appeal

¶ 26 Respondent timely filed a notice of appeal, which stated:

"1. Respondent Mother, AMANDA M[.], appeals the decision to terminate her parental rights made by the Circuit Court of Winnebago County ***.

* * *

5. The date of the Order terminating the parental rights of Respondent Mother, AMANDA M[.], was May 2, 2024."

Although this notice of appeal references the termination of parental rights, it included the case numbers for both M.M.'s and E.N.'s cases.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 A. Appeal in Winnebago County Case No. 22-JA-138 (M.M.'s Case)

¶ 30 On appeal, respondent argues (1) her due process rights were violated when the trial court relied solely on multilevel hearsay when determining she was an unfit parent following the hearing on the State's petition to terminate respondent's parental rights and (2) the court's determination respondent was an unfit parent was against the manifest weight of the evidence. We disagree.

¶ 31 1. *Due Process Rights*

¶ 32 Respondent first asserts her due process rights were violated because the trial court relied solely on multilevel hearsay when determining she was an unfit parent following the hearing

on the State's petition to terminate her parental rights. Although respondent concedes her trial counsel did not object to the admission of the multilevel hearsay nor "raise the issue of due process regarding the use of that evidence alone to prove unfitness," respondent contends this court may review her claim under the plain error doctrine. The State responds that respondent forfeited her ability to appeal this issue under the invited error doctrine.

¶ 33 a. Admission of Multilevel Hearsay

¶ 34 At the outset, we note despite respondent's contention she did not argue the trial court erred in admitting multilevel hearsay at the termination hearing, it appears to this court she argued such in her brief. Respondent specifically stated:

> "Mother argues that [*In re J.J.*, 2022 IL App (4th) 220131-U, ¶ 34, and *In re Z.J.*, 2020 IL App (2d) 190824, ¶ 66,] were erroneous in that they were based on erroneous interpretations of the statute, and if that interpretation is accurate, then section 2-18(4)(b) [of the Juvenile Court Act (705 ILCS 405/2-18(4)(b) (West 2022))] violates due process."

In those cases, the court found section 2-18(4)(b) of the Juvenile Court Act allows the admission of multilevel hearsay in service plans properly admitted as business records. Based on respondent's statement these decisions were erroneously decided, it appears she is arguing this court should disagree with those decisions and find multilevel hearsay contained within service plans is inadmissible. However, as respondent concedes, she acquiesced to the admission of the service plans, and consequently, the multilevel hearsay contained within those plans, at the termination hearing.

¶ 35 Under the invited error doctrine, "a party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d

210, 217 (2004). Furthermore, the Illinois Supreme Court has determined, even when evidence is improper, a party who "procures, invites, or acquiesces in the admission of [the] evidence *** cannot contest the admission on appeal." *People v. Bush*, 214 Ill. 2d 318, 332 (2005). "The rationale behind this well-established rule is that it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings." *Swope*, 213 Ill. 2d at 217.

¶ 36 In this case, respondent's counsel specifically stated there was no objection to the admission of any of the exhibits. Based on respondent's acquiescence to the admission of the multilevel hearsay, she has forfeited her right to challenge its admission on appeal.

¶ 37 b. Trial Court's Reliance on Multilevel Hearsay

¶ 38 Respondent clarified in her reply brief she was not arguing the admission of the multilevel hearsay within the service plans was error; rather, her contention was the trial court improperly relied solely on this multilevel hearsay in its decision to find her an unfit parent. Respondent acknowledged, at the termination hearing, she did not object to the court's utilization of the multilevel hearsay or argue the State improperly relied solely on this multilevel hearsay when attempting to terminate her parental rights. However, she requests this court review her argument under the plain error doctrine. The first step in the analysis of an issue under the plain error doctrine is to determine whether any error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010).

¶ 39 In this case, we find no error occurred. Respondent contends, although the multilevel hearsay within the service plans was admissible, the trial court should not have relied solely on multilevel hearsay when determining respondent was an unfit parent. However, respondent cites no binding authority to support her contention. In fact, all the cases cited by

respondent for this proposition are not Illinois cases, and the majority of cases are not juvenile abuse or neglect cases. Respondent cites one juvenile abuse and neglect case from Texas, which is easily distinguishable. Conversely, this court has specifically stated, "the law is clear that hearsay admitted without objection can be given its natural probative weight." *In re M.D.*, 2022 IL App (4th) 210288, ¶ 102. Therefore, it is clear the court was allowed to give the multilevel hearsay within the properly admitted service plans its natural probative weight.

¶ 40 Respondent further argues the entirety of the caseworker's testimony was hearsay: "The sum total of the testimony of the state's sole witness at trial was to lay the foundation for the state's exhibits, and her recounting of the findings in those service plans as to [respondent]'s completion of services or lack thereof." We disagree with this contention. Dunaj testified she became respondent's caseworker in January 2023 and was familiar with respondent. Dunaj was the caseworker for the entirety of the nine-month period alleged in the State's petition to terminate respondent's parental rights. Thus, Dunaj had personal knowledge of respondent's progress, or lack thereof, in the services recommended under the service plan. Respondent complains there was no testimony establishing Dunaj had personal knowledge of her progress in services. However, respondent was present at the hearing to terminate her parental rights, was represented by counsel, and had the opportunity to cross examine Dunaj on her personal knowledge. Respondent chose not to do so. For all these reasons, we find no error occurred when the trial court relied on testimony from the caseworker and the properly admitted service plans when determining respondent was an unfit parent.

¶ 41 2. *Parental Unfitness Finding*

¶ 42 The Juvenile Court Act sets forth a two-stage process for the involuntary termination of parental rights. At the first stage, "the focus is on the parent's conduct relative to

the ground or grounds of unfitness alleged by the State." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "[T]he State must *** demonstrate by clear and convincing evidence that the parent is 'unfit' under one or more of the grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2004))." *In re Veronica J.*, 371 Ill. App. 3d 822, 828 (2007). On review, this court "accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence." *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). "A decision is against the manifest weight of the evidence when the opposite conclusion is clearly apparent." *In re Ta. T.*, 2021 IL App (4th) 200658, ¶ 48.

¶ 43 In this case, evidence was presented respondent had unresolved substance abuse and mental health issues. Respondent was unsuccessfully discharged from multiple services and unable to begin other services due to her lack of sobriety. Additionally, visitation was suspended due to its negative impact on M.M. Based on respondent's lack of engagement and progress in services, we cannot find the trial court's decision she was an unfit parent was against the manifest weight of the evidence.

¶ 44 B. *Anders* Brief in Winnebago County Case No. 22-JA-139 (E.N.'s Case)

¶ 45 Counsel seeks to withdraw from his representation of respondent, contending there are no meritorious issues for review. In his motion, counsel states he is "unaware of any basis for seeking reversal of the finding in the Order of Discharge, or of any impairment it creates to [respondent's] right to proceed in the future with respect to E.N. in the family case currently pending." After examining the record and counsel's motion to withdraw, we find respondent's appeal presents no potentially meritorious issues for review and, accordingly, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 46 However, this court would be remiss if it did not note counsel should have prepared a supporting memorandum, including any possible issues for appellate review and why those issues are without merit. Counsel could have analyzed the issue of whether the trial court erred in terminating the wardship of E.N. and granting sole custody and guardianship to Kyle N., however, as discussed below, we find any argument on this issue would be meritless.

¶ 47 " 'A trial court's determination to terminate wardship is reviewed under the manifest-weight-of-the-evidence standard when the court's weighing of facts is at issue; otherwise, it is reviewed for abuse of discretion.' " *In re D.V.*, 2024 IL App (4th) 240751, ¶ 52 (quoting *In re Aaron R.*, 387 Ill. App. 3d 1130, 1141 (2009)). Terminating wardship and closing a case is warranted where the "health, safety, and the best interests of the minor and the public no longer require the wardship of the court." 705 ILCS 405/2-31(2) (West 2022).

¶ 48 In this case, E.N. was never taken into care by DCFS, instead, he was placed with her father, Kyle N. Throughout the pendency of the case, E.N. remained in the custody of Kyle N., who cooperated with DCFS and provided full care for E.N. Conversely, respondent was not in compliance with her service plan and continued to struggle with substance abuse and mental health issues. For these reasons, we cannot find the trial court's decision terminating wardship and awarding sole custody and guardianship of E.N. to Kyle N. was "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." (Internal quotation marks omitted.) *Id.* ¶ 52.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we grant appellate counsel's motion to withdraw in case No. 4-24-0767 and affirm the trial court's judgments.

¶ 51 Affirmed.