2024 IL App (4th) 240382-U

NO. 4-24-0382

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 3, 2024
Carla Bender
4th District Appellate
Court, IL

In re H.P., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Tazewell County
Petitioner-Appellee,	)	No. 22JA36
v.	)	
	)	Honorable
Joanna P.,	)	Timothy J. Cusack,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment, concluding no meritorious issue could be raised on appeal.

¶ 2 In June 2023, the State filed a petition to terminate the parental rights of respondent, Joanna P., as to her minor child, H.P. (born March 2022). In January 2024, the trial court found termination of respondent's parental rights was in the minor's best interest. Respondent appealed, and counsel was appointed to represent her. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel has filed a motion to withdraw, contending he cannot raise any meritorious issue on appeal. For the following reasons, we grant counsel's motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Neglect Petition

¶ 5 On March 17, 2022, the State filed a petition seeking to adjudicate H.P. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2022)). The State alleged H.P. was neglected due to being in an environment injurious to his welfare in that (1) respondent and H.P.'s legal father, Bryan P., were found unfit in a prior juvenile case and had not been restored to fitness; (2) Bryan's whereabouts were unknown; (3) respondent was recently hospitalized due to suicidal ideation; (4) respondent and Bryan have a history of drug use, criminal activity, and domestic violence; and (5) respondent and Bryan have prior indicated reports with the Illinois Department of Children and Family Services (DCFS) (*id.* § 2-3(1)(b)). The trial court held a shelter care hearing the same day and granted temporary custody of H.P. to DCFS, with the right to place. Bryan did not attend the shelter care hearing. The court scheduled a hearing for Bryan's first appearance and respondent's answer to the petition for April 8, 2022.

¶ 6 Bryan attended the hearing on April 8, 2022, and the trial court appointed the public defender to represent him. Respondent did not attend. Respondent's counsel asked the foster parent if respondent had a reason for not attending. The foster parent advised respondent was homeless and "wants nothing to do with any of this. She's fed up, gives up." The court found respondent in default and scheduled a hearing for Bryan's answer for April 29, 2022.

¶ 7 At the April 29, 2022, hearing, the trial court received Bryan's stipulation to the petition. Respondent did not attend, but, through counsel, she filed an answer denying count I of the petition. The court scheduled an adjudicatory hearing for June 10, 2022.

¶ 8 B. The Adjudicatory and Dispositional Hearings

¶ 9 At the adjudicatory hearing, the trial court accepted respondent's amended answer stipulating to the petition. The court accordingly adjudicated H.P. neglected. The court scheduled

a dispositional hearing for July 8, 2022. Respondent was incarcerated on the day of the dispositional hearing and did not appear, despite the court issuing a video writ. The court noted the report submitted for the hearing did not include any information regarding respondent. The court continued the hearing to August 12, 2022. Respondent refused to appear for the continued dispositional hearing. The court found respondent unfit and unable for reasons other than financial circumstances alone to care for H.P. and placed his guardianship and custody with DCFS, with the right to place.

¶ 10 C. The Termination Proceedings

¶ 11 1. *The Initial and Supplemental Termination Petitions*

¶ 12 On June 7, 2023, the State filed a petition seeking to terminate respondent's parental rights. The State alleged respondent was unfit for failing to make reasonable progress towards H.P.'s return to her during a nine-month period following the adjudication of neglect, namely, between September 2, 2022, and June 2, 2023 (750 ILCS 50/1(D)(m)(ii) (West 2022)). On July 3, 2023, the State filed a supplemental petition, alleging respondent was unfit due to (1) being depraved in that she had at least three felony convictions, including at least one within the preceding five years (count IV) (*id.* § 1(D)(i)) and (2) being (a) incarcerated at the time the supplemental petition was filed, (b) repeatedly incarcerated as a result of criminal convictions, and (c) prevented from discharging her parental responsibilities due to her repeated incarceration (count V) (*id.* § 1(D)(s)).

¶ 13 On July 14, 2023, respondent denied the allegations in the supplemental petition. Thereafter, the trial court continued the unfitness hearing to January 19, 2024.

¶ 14 2. *The Unfitness Hearing*

¶ 15 The trial court held the unfitness hearing on January 19, 2024. Respondent did not attend. After admitting certified copies of the felony convictions set forth in count IV of the supplemental petition, the court found the State met its burden of proving respondent unfit by clear and convincing evidence. The court scheduled the best interest hearing for January 26, 2024.

¶ 16 3. *The Best Interest Hearing*

¶ 17 On January 4, 2024, the Center for Youth & Family Solutions (CYFS) filed the report it prepared on November 29, 2023, in advance of the hearing scheduled (at that time) for December 1, 2023. H.P. had resided with fictive kin in Peoria since the case opened. H.P.'s foster parents, Eileen B. and Edward B., were willing and able to provide permanency for him. Eileen and Edward were providing for H.P.'s needs for food, shelter, health care, and clothing. Christie Joiner, the CYFS caseworker, observed the foster home to be clean, with no safety hazards. Joiner observed H.P. to be attached to his foster parents and the foster parents to be "very affectionate and nurturing towards [him]."

¶ 18 Respondent did not appear at the best interest hearing. Joiner testified she had been the caseworker for almost two months. Joiner observed H.P. was "very bonded" with his foster parents, whom he called "Mom and [D]ad." H.P. had his own bedroom in the foster home. The foster parents wished to adopt H.P., and Joiner supported that goal.

¶ 19 Eileen B. testified she had been H.P.'s foster mother for almost two years. Eileen considered H.P. her son. H.P. went to medical appointments and was current on immunizations. Eileen's adult children visited H.P. and considered him part of the family. Eileen and Edward wanted to adopt H.P.

¶ 20 The trial court found the best interest factors weighed "heavily" in favor of H.P.'s placement with the foster parents. The court ordered respondent's parental rights terminated and changed the goal to adoption.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, appellate counsel seeks to withdraw on the basis he cannot raise any arguments of potential merit.

¶ 24 The procedure for appellate counsel to withdraw set forth in *Anders* applies to proceedings under the Juvenile Court Act. See *In re J.P.*, 2016 IL App (1st) 161518, ¶ 8, 65 N.E.3d 1009. Under this procedure, counsel's request to withdraw must " 'be accompanied by a brief referring to anything in the record that might arguably support the appeal.' " *In re S.M.*, 314 Ill. App. 3d 682, 685, 732 N.E.2d 140, 143 (2000) (quoting *Anders*, 386 U.S. at 744). Counsel must "(a) sketch the argument in support of the issues that could conceivably be raised on appeal, and then (b) explain why he believes the arguments are frivolous." *Id.* Counsel must then conclude the case presents no viable grounds for appeal. *Id.*

¶ 25 In his memorandum supporting his motion to withdraw, appellate counsel states he has considered whether there are any meritorious arguments challenging (1) the trial court's finding respondent was unfit as alleged in the supplemental petition or (2) the court's finding it was in H.P.'s best interest for respondent's parental rights to be terminated. Counsel concludes any such arguments would be frivolous. Counsel states he has reviewed the record on appeal, and his brief demonstrates he has reviewed the report of the termination proceedings. Counsel provided notice of service of his motion and supporting memorandum on respondent. This court granted respondent the opportunity to file a response. Respondent has not done so.

¶ 26 A. The Unfitness Finding

¶ 27 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 as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). Here, the court found respondent unfit as alleged in count IV of the supplemental petition, namely for being depraved for having at least three felony convictions, with at least one of them within five years of the filing of the supplemental petition.

¶ 28 A parent will be found unfit if the State proves by clear and convincing evidence the parent is depraved. 750 ILCS 50/1(D)(i) (West 2022). Section 1(D)(i) of the Adoption Act creates a presumption a parent is depraved if that parent was convicted of at least three felonies and at least one of the convictions took place within five years of the filing of the petition seeking termination of parental rights. *Id.* The presumption of depravity is rebuttable. *Id.* One may rebut the depravity presumption with evidence of rehabilitation or by showing the circumstances surrounding the offenses did not result from depravity. *In re T.T.*, 322 Ill. App. 3d 462, 466, 749 N.E.2d 1043, 1046 (2001). Once evidence opposing the presumption is presented, the presumption ceases to operate, and the issue is decided on the evidence as if no presumption had existed. See *In re J.A.*, 316 Ill. App. 3d 553, 562, 736 N.E.2d 678, 686 (2000). This court will not overturn a trial court's determination on parental fitness unless it is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 29 Here, although not included in the record on appeal, the report of the proceeding for the unfitness hearing reflects the trial court admitted into evidence without objection certified

copies of the felony convictions set forth in count IV of the supplemental petition (State's exhibits A through E). Count IV alleges those convictions were for (1) possession of a controlled substance in Will County case No. 20-CF-1030, (2) possession of a controlled substance in McLean County case No. 20-CF-1007, (3) conspiracy—financial institution robbery and giving a false bomb/gas alarm in McLean County case No. 16-CF-787, (4) possession of a controlled substance in McLean County case No. 15-CF-1462, and (5) possession of a controlled substance in McLean County case No. 15-CF-484. Thus, the court received evidence respondent had five felony convictions, including two within five years of the July 2023 supplemental petition. The certified convictions were therefore sufficient to establish a rebuttable presumption of depravity. 750 ILCS 50/1(D)(i) (West 2022).

¶ 30 Respondent did not appear at the unfitness hearing, and her counsel did not present any evidence to rebut the presumption. Thus, the trial court's finding of unfitness pursuant to section 1(D)(i) is not against the manifest weight of the evidence, as the opposite conclusion is not clearly evident. We therefore agree with appellate counsel any argument the court erred in finding respondent unfit would be frivolous.

¶ 31 B. The Best Interest Finding

¶ 32 When a trial court finds a parent 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, 818 N.E.2d 1214, 1220 (2004). "[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." *Id.* at 364. In making the best-interests determination, the court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)). These 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, 918 N.E.2d 284, 291 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

"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, 8 N.E.3d 1258. On review, "[w]e will not disturb a court's finding that termination is in the [child's] best interest unless it was against the manifest weight of the evidence." *T.A.*, 359 Ill. App. 3d at 961. "A finding is against the manifest weight of the evidence only if the evidence clearly calls for the opposite finding [citation], such that no reasonable person could arrive at the circuit court's finding on the basis of the evidence in the record [citation]." (Internal quotation marks omitted.) *In re J.H.*, 2020 IL App (4th) 200150, ¶ 68, 162 N.E.3d 454.

¶ 33 Here, the evidence established terminating respondent's parental rights was in H.P.'s best interest. H.P. had resided with his foster parents since his case opened, was "very bonded" with them, and called them mom and dad. His foster parents were "very affectionate

and nurturing towards [him].” Eileen’s adult children visited H.P. and considered him part of the family. Their home was observed to be clean and safe. They met H.P.’s basic needs of food, shelter, clothing, and health care, and they were willing to provide permanency through adoption. The trial court’s best interest finding is not against the manifest weight of the evidence, as the opposite conclusion is not clearly evident. We agree with appellate counsel no meritorious argument can be made the court’s best interest finding was against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.