2024 IL App (4th) 231442-U

NO. 4-23-1442

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 1, 2024
Carla Bender
4th District Appellate
Court, IL

In re D.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Henderson County
Petitioner-Appellee,	)	No. 21JA3
v.	)	
John T.,	)	Honorable
Respondent-Appellant).	)	Raymond A. Cavanaugh,
	)	Judge Presiding.

PRESIDING JUSTICE CAVANAGH delivered the judgment of the court.
Justices Doherty and Lannerd 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, concluding no meritorious issues could be raised on appeal.

¶ 2 In November 2023, the trial court entered an order terminating the parental rights of respondent, John T., to his minor child, D.T. (born in September 2019). Respondent appealed, and counsel was appointed to represent him. Appellate counsel now moves to withdraw, citing *Anders v. California*, 386 U.S. 738 (1967), on the basis that she cannot raise any potentially meritorious arguments on appeal. We grant the motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Procedural History

¶ 5 In June 2021, the State filed a petition seeking to adjudicate D.T. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2020)). The State alleged D.T. was neglected due to being in an environment injurious to her welfare in that she resided with her mother, Shenelle M., in a place that had cockroaches and other unsuitable living conditions (*id.* § 2-3(1)(b)). In September 2021, the trial court adjudicated D.T. neglected pursuant to Shenelle's stipulation to the neglect petition. In October 2021, the court entered a dispositional order finding respondent unfit to care for D.T. due to substance abuse issues and failure to maintain a clean and safe living environment, making D.T. a ward of the court, and placing her guardianship and custody with the Illinois Department of Children and Family Services (DCFS).

¶ 6 B. The Termination Petition

¶ 7 In May 2023, the State filed a petition to terminate respondent's parental rights. The State alleged respondent was unfit for (1) failing to make reasonable efforts to correct the conditions that were the basis for D.T.'s removal during the nine-month period following adjudication spanning from March 1, 2022, to December 1, 2022, (750 ILCS 50/1(D)(m)(i) (West 2022)) and (2) failing to make reasonable progress toward D.T.'s return during this same period (*id.* § 1(D)(m)(ii)). Specifically, the State alleged respondent failed to make reasonable efforts or reasonable progress in that, *inter alia*, respondent (1) had no contact with D.T. since she came into care, (2) had not completed services or cooperated with DCFS, (3) last had contact with DCFS in July 2022 in a phone conversation, during which he sounded under the influence and admitted using methamphetamine the previous month, and (4) was sentenced to 10 years' imprisonment in Iowa in November 2022 for a drug-related offense.

¶ 8 C. The Fitness Hearing

¶ 9 In October 2023, the trial court conducted the fitness hearing.

¶ 10 1. *The State's Evidence*

¶ 11 a. Brooke Matykiewicz

¶ 12 Brooke Matykiewicz testified she was the caseworker from June 2021 to November 2022. Matykiewicz only had contact with respondent once or twice between when D.T. came into care and July 2022. During a July 2022 phone conversation, respondent reported living in Decatur, Illinois, but would not provide an address due to having an active warrant. Matykiewicz believed respondent was under the influence during that conversation because his speech was slurred. Respondent denied being under the influence but admitted using methamphetamine the previous month.

¶ 13 Respondent was required to cooperate with DCFS, obtain stable housing and income, participate in parenting education, a mental health evaluation, and a substance abuse evaluation, and follow through with any recommended treatment. Respondent also was required to submit to random drug drops. Respondent did not complete any of these services. Respondent also did not have any visits with D.T. the entire time Matykiewicz was the caseworker. To Matykiewicz's knowledge, respondent never sent any letters or gifts to D.T.

¶ 14 b. Nicolette Fox

¶ 15 Nicolette Fox testified she has been the caseworker since November 2022. Fox conducted a search in an effort to contact respondent and learned he was in jail in Lee County, Iowa. Fox sent a service plan to the jail. Respondent later confirmed he received the service plan in November 2022. Thereafter, respondent was transferred several times. Respondent was not in contact with Fox by phone or video chat. Respondent did not have any visitation with D.T. or send any letters or gifts.

¶ 16 2. *Respondent's Evidence*

¶ 17 Respondent testified he received a service plan in November 2022 and underwent a substance abuse evaluation.

¶ 18 3. *The Trial Court's Unfitness Finding*

¶ 19 The trial court found respondent unfit for failing to make reasonable efforts or reasonable progress during the relevant period. The court found the only contact respondent had with DCFS was one phone conversation with the caseworker, during which he sounded under the influence, and his only engagement in services was a substance abuse evaluation in jail.

¶ 20 D. The Best Interest Hearing

¶ 21 In November 2023, the trial court conducted the best interest hearing.

¶ 22 1. *The State's Evidence*

¶ 23 The best interest report was admitted without objection. The report noted D.T. was four years old, in a traditional foster home, "well bonded with her foster parents," Roy and Melissa W., and "thriving in this home." Roy and Melissa had been meeting D.T.'s needs for food, clothing, and shelter. D.T. was in her second year of preschool and was engaged in a T-ball program and church programs with Roy and Melissa.

¶ 24 Fox testified she had no concerns regarding Roy and Melissa's ability to provide for D.T.'s needs. When Fox visited the foster home, Roy and Melissa's grandchildren and D.T. were "always playing and having a really good time." The home was "always lively," and D.T. was "healthy" and "always happy." Fox believed D.T. felt loved and valued by Roy and Melissa and was attached to them. Roy and Melissa wanted to adopt D.T. Respondent never visited with D.T., and Fox was not aware of any bond between respondent and D.T.

¶ 25 2. *The Trial Court's Best Interest Finding*

¶ 26 The trial court found D.T. had been in foster care for 901 days and Roy and Melissa were the only parents D.T. had ever known. The court found it was in D.T.'s best interest to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

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

¶ 30 The procedure for appellate counsel to withdraw set forth in *Anders* applies to findings of parental unfitness and termination of parental rights. *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000). According to 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." *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 [s]he believes the arguments are frivolous." *S.M.*, 314 Ill. App. 3d at 685. Counsel must then conclude the case presents no viable grounds for appeal. *Id.* In doing so, counsel should review both the unfitness and best interest findings and indicate in the brief that she has done so. *Id.* at 685-86.

¶ 31 Here, counsel states she has reviewed the record on appeal, and her brief demonstrates she has reviewed the report of the termination proceeding. The record indicates counsel sent a copy of her motion and brief to respondent by mail. Respondent has not filed a response. Counsel states any argument that the trial court erred in finding respondent unfit for failing to make reasonable efforts or reasonable progress during the relevant period would be frivolous given his lack of engagement in services or visitation and having contact with DCFS only once. Counsel also states any argument the court erred in finding it in D.T.'s best interest to

terminate respondent's parental rights would be frivolous given D.T. resided in her foster home for over two years and was attached to her foster parents, who wanted to adopt her, while respondent had no contact or visitation with her since she was taken into care. We address each argument in turn and ultimately agree with counsel's conclusion there are no issues of arguable merit to be raised on appeal.

¶ 32 A. The Unfitness Finding

¶ 33 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 (2005). A parent may be found unfit if he fails

> "(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 minor ***, 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).

¶ 34 Whether a parent made reasonable efforts to correct the conditions which were the basis for the removal of a child involves a subjective judgment of the effort that is reasonable for that particular parent. *In re S.J.*, 233 Ill. App. 3d 88, 117 (1992). This court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the [trial] court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the

> child is sufficiently demonstrable and of such a quality that the court, in the near future, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent will have fully complied with the directives previously given to the parent in order to regain custody of the child." (Emphases omitted.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 35 We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re J.H.*, 2020 IL App (4th) 200150, ¶ 68. "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 [trial] court's finding on the basis of the evidence in the record [citation]." (Internal quotation marks omitted.) *Id.*

¶ 36 Here, the record clearly shows respondent failed to make reasonable efforts to correct the conditions that were the basis for D.T.'s removal or to make reasonable progress toward her return during the relevant period. Matykiewicz had contact with respondent in one phone conversation in July 2022, during which he sounded under the influence and admitted using methamphetamine the previous month. Fox never had contact with respondent. Respondent testified he received a service plan in November 2022. During the relevant period, respondent merely underwent a substance abuse evaluation in jail, did not complete any services, did not visit with D.T., and did not send D.T. any letters or gifts. We find not only was the trial court's finding of unfitness not against the manifest weight of the evidence, but no meritorious argument could be made to the contrary.

¶ 37 B. The Best Interest Finding

¶ 38 When a trial court finds a parent to be 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 (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 interest finding, 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 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 39 Here, the evidence established it was in D.T.'s best interest to terminate respondent's parental rights. D.T. was "well bonded" with Roy and Melissa and was "thriving" in their home. Roy and Melissa were providing for D.T.'s needs, and Fox had no concerns about their ability to continue doing so. D.T. attended preschool, and Roy and Melissa involved her in sports and church activities. D.T. was healthy, happy, and having a "really good time" in her "lively" foster home with Roy and Melissa's grandchildren. Roy and Melissa were the only

parents D.T. had ever known, and they were willing to provide permanency through adoption. By contrast, respondent had never visited with D.T., and Fox was unaware of any bond existing between respondent and D.T. We agree with appellate counsel no meritorious argument can be made that the trial court's best interest finding was against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

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

¶ 42 Affirmed.