

2012 IL App (2d) 120178-U
No. 2-12-0178
Order filed July 23, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> REBECCA C., RACHEL C. and AMOS C., Minors)	Appeal from the Circuit Court of Winnebago County.
)	
)	Nos. 09-JA-68
)	09-JA-69
)	09-JA-70
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Javier C., Respondent-Appellant).)	Honorable Patrick L. Heaslip and Mary Linn Green, Judges, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: Counsel's motion to withdraw granted where no issues of arguable merit were presented; the trial court's finding that respondent was shown to be unfit by clear and convincing evidence was not against the manifest weight of the evidence; the trial court's finding that the State proved by a preponderance of the evidence that it was in the best interests of the minors that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 1 Respondent, Javier C., appeals from the trial court's order entered February 10, 2012, terminating his parental rights. Respondent timely appealed, and the court appointed private counsel to represent respondent.

¶ 2 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel moves to withdraw. In his motion, counsel states that he read the record and found no issue of arguable merit. Counsel further states that he has reviewed the potential issues on appeal with trial counsel, who was unable to identify any justiciable issues on appeal. Counsel has advised defendant of his opinion. Counsel supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why that issue lacks arguable merit. Defendant has not responded, and the time to respond has expired. We agree that the appeal presents no issues of arguable merit.

¶ 3 This appeal involves three minors: Amos C., born January 21, 1998; and twins Rebecca C. and Rachel C., born January 28, 1999. Javier is the father of all three minors and Shana C. is their mother. In 2002, Javier was indicated by the Department of Children and Family Services (DCFS) for sexual abuse of all three. At that time, he was ordered to have no contact with any of the minors.

¶ 4 In February 2009, the police were called to Javier's home due to a domestic argument between Javier and Shana. Subsequently, on March 2, 2009, the State filed three neglect petitions alleging each minor to be neglected and, after two shelter care hearings, the trial court found there was probable cause to believe the minors were neglected. DCFS was awarded temporary custody of the minors and was given discretion to place them with a responsible relative or traditional foster care and to allow supervised visitation between Javier and the minors.

¶ 5 At the adjudicatory hearing, City of Rockford police officer Timothy Campbell testified that on February 13, 2009, he responded to a domestic battery call at the home of Shana and Javier. When he arrived, Javier was present in the home. Javier told him that he had a verbal argument with Shana, and that she grabbed him and pushed him and then left with the children. Campbell stated

that Shana returned shortly thereafter. Shana told Campbell that Javier lunged toward her, struck her nose with an open hand, then grabbed her around the neck and pinned her in her chair. She grabbed him and pushed him away and was able to get up. She started to gather the minors to leave the house, when Javier struck her on the side of her face with a belt.

¶ 6 Campbell further testified that Amos and Rachel told him that they saw their father grab their mother around her neck and choke her. Rachel told him that this was a “common thing to happen in that household.”

¶ 7 Colette Hennigan, DCFS caseworker, testified that on February 26 she visited the residence to investigate the domestic violence incident. During this visit, all three minors told her that they had witnessed Javier hit Shana. In the course of her investigation, she interviewed Javier, who denied knowledge of a previous investigation or allegation of sexual abuse. He also denied any incidents of domestic violence.

¶ 8 On October 15, 2009, after an adjudicatory hearing, Judge Patrick L. Heaslip presiding, the minors were adjudicated neglected. On October 16, Catholic Charities caseworker Betsy Sanchez testified at a dispositional hearing. Sanchez stated that neither parent had completed any services that had been requested. Specifically, Javier told her that “he [was] not going to do any services because he [was] not going to cover up for DCFS mistakes.” Sanchez had been unable to determine whether Javier’s residence was safe for the minors. Javier had three visits with the minors and Sanchez stated that he appeared to interact well with them.

¶ 9 On November 9, 2009, the trial court found that both Javier and Shana were unfit. Custody and guardianship of the minors were granted to DCFS with discretion to place them with a relative or in traditional foster care. Both parents were ordered to remain free of all illegal drugs and alcohol,

comply with random drug drops and breathalyzer testing, cooperate with their caseworkers, and sign all necessary releases of information. They were ordered to submit to all requested assessments and to proceed with any recommended treatment. Javier was also asked to attend sexual offender services.

¶ 10 A permanency review was held on May 11, 2010. Amanda Morelock, caseworker for Catholic Charities, testified that Javier had supervised visitation with the minors once a week. He was also asked to participate in domestic violence counseling and parenting classes, but he was not participating in any services. Morelock stated that Javier indicated that he would not do any services because “he doesn’t think he’s done anything wrong.” He told her that if he participated that it would mean he was “admitting to doing something wrong.” Morelock further stated that Javier “says it’s our fault and that he doesn’t want to do the services because of that.”

¶ 11 After hearing testimony, the trial court found that DCFS had made reasonable efforts, but that the parents had not, and set a 12-month goal of the minors’ returning home.

¶ 12 On November 2, 2010, another permanency review was held. Leslie Montoya, Catholic Charities caseworker, testified that she was assigned to the case in July 2010. She stated that Javier had been asked to participate in domestic violence classes and to cooperate with the psychological evaluation. Javier had supervised visitation with the minors once a week for one hour. The court found that he had not made reasonable efforts and ordered him to comply with services as requested by the agency.

¶ 13 On May 2, 2011, a permanency review was held, Judge Mary Linn Green presiding. Montoya again testified. She stated that Javier consistently attended supervised weekly visitation for one hour with the three minors, although he “usually” was late for the visits. He had not

completed any other services. He had refused to provide an address to either Catholic Charities or CASA. Montoya stated that, in September 2010, Javier agreed to comply with the sexual offender treatment but, as of the date of the hearing, had not yet done so; Catholic Charities had not yet approved treatment, although DCFS approved on February 1, 2011. He did complete urine screens for drugs and those were negative.

¶ 14 At the end of the hearing, the trial court found that neither Javier nor Shana had made reasonable efforts for the review period, and the goal was changed from returning the minors home to substitute care pending court determination of parental rights.

¶ 15 On June 2, 2011, the State filed a petition to terminate parental rights of both Javier and Shana as to all three minors. A trial commenced on November 3, 2011.

¶ 16 At the trial, Leslie Montoya, Youth Service Bureau foster care caseworker, testified that she was assigned the case in July 2010, and that she was familiar with the three minors' cases. She stated that Javier was required to attend sexual offender treatment, domestic violence classes, anger management classes, and parenting classes. Montoya testified that he did not complete a sex offender evaluation. He had attended anger management classes but did not successfully complete the program.

¶ 17 Montoya stated that, at the time of the trial, Javier had no visitation with the minors. She stated that she was unsure whether Javier and Shana were living together, and that this was a concern because "if one parent has not completed services, it affects the other parent." She also stated that she had not attempted home visits, because she believed Shana's home was an unsafe environment for her, due to the hostility she felt was directed toward her. Further, Javier had not provided a home address "until this year" despite having been ordered by the court to do so on two earlier occasions.

Further, Montoya stated that Javier and Shana had not been cooperative with Youth Services Bureau or any agency, were not willing to engage in services, did not have appropriate behavior, did not obey court orders and did not complete services.

¶ 18 On January 20, 2012, the trial court found that the State proved by clear and convincing evidence that Javier was unfit as alleged in counts I, III, IV and V of the petition.[R570]

¶ 19 The court then proceeded to the best interests hearing, at which Montoya and Shana testified. Montoya stated that Javier was referred to anger management and a sexual offender evaluation but that he had completed no services. She stated that both parents continually brought up the issue of the minors' having asthma despite a medical evaluation that determined they did not need asthma treatment. Montoya opined that Javier would not be able to provide a safe and stable home for the minors.

¶ 20 The minors have been living in foster care with their maternal uncle since March 2009. They are attending school and receiving medical care. Amos is now 14 years old and wishes to be adopted by his foster father. Rachel and Rebecca are now 13 years old and, while they would prefer to live with their mother, are very close and supportive of each other. Their foster father testified that he is willing to adopt all three. He also testified that if any of the minors wished to attend their church, he would see to it.

¶ 21 On February 7, the trial court, Judge Green presiding, found it was in the best interests of the minors to terminate Javier's parental rights. Javier timely appealed.

¶ 22 ANALYSIS

¶ 23 The Juvenile Court Act provides a bifurcated system in which parental rights can be terminated. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008); 705 ILCS 405/2-29(2) (West

2008). First, the State must show by clear and convincing evidence that the parent is unfit. *In re Konstantinos H.*, 387 Ill. App. 3d at 203. “A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act [750 ILCS 50/1(D) (West 2010)].” *Id.* at 203-04. “Where a challenge is made to the sufficiency of the evidence underlying a trial court's finding of unfitness, a reviewing court will reverse such finding only where it is against the manifest weight of the evidence.” *In re C.W.*, 199 Ill.2d 198, 211 (2002).

¶ 24 The State must then show that the best interests of the children are served by severing the parental rights. *Konstantinos H.*, 387 Ill. App. 3d at 203. The trial court's decision to terminate parental rights involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). Thus, the trial court's factual findings will not be disturbed unless they are contrary to the manifest weight of the evidence. *Id.* “A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented.” *Id.* Finally, because each case involving parental unfitness is *sui generis*, we do not make factual comparisons to other cases. *In re J'America B.*, 346 Ill.App.3d 1034, 1046 (2004).

¶ 25 Unfitness

¶ 26 Count I of the motion for termination of parental rights, filed June 2, 2011, alleged that Javier had failed to maintain a reasonable degree of interest, concern or responsibility in the minors' welfare. Counsel on appeal points out that Javier did not maintain concern or interest or responsibility for the minors for any period of time after they were adjudicated neglected in 2009 and their custody was granted to DCFS. Reviewing the evidence in accordance with the applicable

standard of review, we conclude that the trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 27 The evidence presented to the trial court was clear and convincing that Javier and Shana engaged in domestic violence in the presence of the minors. Although Javier and Shana both denied having any altercation in February 2009 and Javier denied any sexual abuse, the trial court heard testimony from the police officer and the DCFS caseworker who investigated the domestic violence incident. The evidence presented indicated there was an altercation at home, and that the minors were present. The officer testified that Rachel told him that this was a "common thing to happen in that household."

¶ 28 Further, the record supports the trial court's findings that Javier failed to become involved in the services necessary to bring about reconciliation with his children. Javier's failure to participate in the services supports the finding of unfitness. In October 2009, after the finding of neglect, Javier was ordered to cooperate with the caseworkers, and to submit to all requested assessments and recommended treatment. Javier was also asked to attend sexual offender services. The evidence clearly proved that Javier has never complied with DCFS requests or direct court orders. He has consistently denied the sexual abuse and the domestic violence. He had not completed any programs requested, and he exhibited a lack of concern regarding the children and their well-being. Moreover, he refused to supply the court or DCFS with his home address, saying that it was not necessary. Since there is sufficient evidence to satisfy this statutory ground, we need not consider other findings of parental unfitness. See *Katrina R.*, 364 Ill. App. 3d at 842.

¶ 29

Best Interests

¶ 30 The constitutionally proper standard at a best-interest hearing is proof by a preponderance of the evidence, which adequately ensures the level of certainty about the court’s factual conclusions necessary to satisfy due process. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). “[T]he question before us is not what we would have done in the first instance if we had been acting as the trial court and this evidence was presented before us. The question for us, as a reviewing court, is whether the trial court's decision was against the manifest weight of the evidence.” *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. Thus, our standard of review of the trial court’s decision is whether the findings were contrary to the manifest weight of the evidence. *Id.*

¶ 31 In the context of a best-interest determination, section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2008)) sets forth a number of factors to consider within “the context of the child’s age and developmental needs.” These factors include the physical safety and welfare of the child, including food, shelter, health and clothing; the child’s background and ties, including familial, cultural, and religious; the child’s wishes and long-term goals; and the child’s need for permanence which includes his or her need for stability and continuity of relationships with parent figures and with siblings and other relatives. In this case, the minors have been living in foster care with their maternal uncle, Sheldon Murphy, since March 2009, and he is willing to adopt all three. Amos is now 14 years old and wishes to be adopted by his uncle. Rachel and Rebecca are now 13 years old and, while they would prefer to live with their mother, are very close and supportive of each other. They are attending school and receiving medical care. Murphy testified that if any of the minors wished to attend their church, he would see to it.

¶ 32 We are guided by the Illinois Supreme Court in *C.W.*, 199 Ill. 2d at 217, which stated, “at the second stage of the termination hearing, at which the court considers whether it is in the best interest

of the minor that parental rights be terminated, *** the full range of the parent's conduct can be considered." After examining the record, the motion to withdraw, the memorandum of law, and the response, we agree with counsel that this appeal presents no issue of arguable merit. The termination of Javier's parental rights was not against the manifest weight of the evidence, because the State proved, by a preponderance of the evidence, that Javier failed to maintain a reasonable degree of interest, concern or responsibility in the minors' welfare, as alleged in count I of the petition to terminate his parental rights. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 33 Affirmed.