2012 IL App (2d) 120682-U
No. 2-12-0682
Order filed September 21, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re C.M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No 10-JA-37
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Johnny M.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* In termination proceedings, there were no potentially meritorious issues for appeal. Therefore, appellate counsel's motion to withdraw was allowed.

¶ 2 On May 25, 2012, the circuit court of Winnebago County terminated the parental rights of respondent, Johnny M., to his daughter, C.M. Pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), respondent's counsel now moves to withdraw as counsel on appeal. In his motion, counsel states that he has read the record and found no issue of arguable merit. Counsel supports his motion with a memorandum of law providing a statement of facts, identifying several potential issues on appeal, and arguing why

each potential issue lacks arguable merit. See *Anders*, 386 U.S. at 744 (appellate counsel must accompany his request to withdraw with a brief "referring to anything in the record that might arguably support the appeal"). We granted respondent 30 days in which to respond to the motion to withdraw, and respondent timely supplied a one-page handwritten response. After reviewing the parties' submissions and the record, we agree with counsel that there are no potentially meritorious issues for appeal. Accordingly, we grant counsel's motion to withdraw.

¶ 3 We recite the facts of record pertinent to our disposition. In April 2009, C.M. was born. On July 27, 2011, respondent was convicted of two counts of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2009)) stemming from a November 30, 2009, incident in which defendant knee-dropped onto the abdomen of his then-girlfriend's (not C.M.'s mother) young child (not C.M.), causing nearly fatal injuries to the child. Respondent was sentenced to a 36-year term of imprisonment, and respondent's projected release-date is in 2040. Respondent admitted that he had no physical contact with (before and during his incarceration) and had done nothing to support C.M. Further, respondent has been incarcerated for nearly all of C.M.'s life, and has not received a visit from C.M.

¶ 4 Respondent testified that he occasionally sent cards to C.M. when he had funds sufficient to pay the postage. Respondent sent the cards once every three months or so. Respondent also tried to take whatever classes and services have been offered in jail and in prison, such as anger management and GED courses.

¶ 5 The State petitioned to terminate respondent's parental rights pursuant to six counts, including the allegation that C.M. was in custody of the Department of Children and Family Services (DCFS), respondent was incarcerated as a result of a criminal conviction at the time the motion to

terminate parental rights was filed, prior to his incarceration, respondent had little or no contact with C.M. and provided little or no support for the child, and respondent's incarceration would prevent him from discharging his parental responsibilities for a period in excess of two years after filing the motion to terminate parental rights. Respondent opposed the termination of his parental rights, arguing (with some support in the record) that he was doing the best he could to comply with DCFS service plans in the circumstances of his incarceration. Following a hearing, the trial court determined that respondent was unfit under each of the counts, including the one specified above.

¶ 6 The trial court then determined that it was in C.M.'s best interests to terminate respondent's parental rights. The trial court held that C.M. was in a stable situation and that the foster parent wanted to adopt C.M. C.M. never talked about her father, and she knew no other home. Respondent offered no testimony. The trial court terminated respondent's parental rights. Respondent timely appeals.

¶ 7 On appeal, counsel asserts that there are no issues of arguable merit and seeks to withdraw. The termination of parental rights proceeds in a bifurcated manner. 705 ILCS 405/2-29 (West 2012). In order to terminate a party's parental rights, the trial court must determine: (1) the party is unfit, and (2) the termination of the party's parental rights is in the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 352 (2004). The trial court must determine that the parent is unfit by clear and convincing evidence (*D.T.*, 212 Ill. 2d at 364); following a determination of unfitness, the trial court must determine that termination of the parent's parental rights is in the best interests of the child by a preponderance of evidence. (*D.T.*, 212 Ill. 2d at 365).

¶ 8 Turning to the unfitness determination, the State must allege at least one of the statutory grounds of unfitness (see 750 ILCS 50/1(D) (2012)), and the trial court may not terminate the

parent's parental rights on grounds not alleged in the petition to terminate. *In re D.C.*, 209 Ill. 2d 287, 296 (2004). A determination of unfitness need only be made upon a single ground; further if multiple grounds are alleged, a determination on a single ground will support termination of parental rights. *D.C.*, 209 Ill. 2d at 296. The trial court's determination on unfitness will not be disturbed unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). With these principles in mind, we consider the trial court's determination of respondent's unfitness.

¶ 9 Here, the State alleged that respondent was unfit, using six statutory grounds. In particular, the State alleged respondent was unfit because:

> "The child is in the temporary custody or guardianship of the [DCFS], the parent is incarcerated as a result of a criminal conviction at the time of the motion for termination of parental rights is filed, prior to the incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his parental responsibilities for the child for a period in excess of two (2) years after the filing of the motion for termination of parental rights."

This allegation exactly tracks the statutory language used as one of the defnitions of unfitness. 750 ILCS 50/1(D)(r) (West 2012). It is clearly seen that the State, in order to prove unfitness pursuant to subsection (r), must prove four things: (1) the child is in the temporary custody or guardianship of the DCFS; (2) the parent is incarcerated at the time the motion to terminate is filed; (3) before the parent was incarcerated, he had little or no contact with the child or else provided little or no support for the child; and (4) the parent will remain incarcerated for two or more years, and his incarceration prevents the parent from parenting the child. See *In re Gwynne P.*, 215 Ill. 2d 340, 354-55 (2005)

(discussing the four elements of the materially similar provision in 750 ILCS 50/1(D)(s) (West 2002)).

¶ 10 The State proved each of the four elements of subsection (r) by clear and convincing evidence. First, on November 12, 2010, C.M.'s custody and guardianship was placed with the DCFS. Second, respondent was incarcerated at the time of the first shelter care hearing and remained in custody throughout all of the proceedings. On July 27, 2011, respondent was convicted of aggravated battery of a child, for which he was sentenced to a 36-year prison term and he was incarcerated. On April 12, 2012, the motion to terminate was filed. Thus, respondent was incarcerated for a criminal conviction at the time the motion to terminate was filed. Third, respondent admitted in his testimony that he had little or no contact with C.M. since she was born and no contact at all since his arrest for aggravated battery of a child. Respondent also admitted that he had provided no support at all for C.M. Fourth and last, respondent's incarceration will prevent him from discharging any of his parental responsibilities toward C.M. This is seen from respondent's admission that he has not had any contact with C.M. Respondent also testified that he tries to send cards to C.M., but averages about a card every three months. Thus, the contact he is able to have with C.M. is minimal and sporadic, at best. Last, by being incarcerated, respondent cannot have custody of the child, and cannot provide for her material needs like support, shelter, education, medical care, or safety.

¶ 11 The State overwhelmingly proved that respondent was unfit by virtue of his lengthy incarceration under subsection (r). The State need only prove a single ground of unfitness. *D.C.*, 209 Ill. 2d at 296. This single ground is sufficient to support the trial court's judgment regarding unfitness. Further, no arguably meritorious issues exist with regard to the State's proof of unfitness

pursuant to subsection (r). Additionally, because of our conclusion regarding the State's proof of unfitness pursuant to subsection (r), we do not consider any of the other allegations of unfitness, as proof of a single ground of unfitness suffices. *D.C.*, 209 Ill. 2d at 296. Accordingly, we hold that the trial court's unfitness determination was not against the manifest weight of the evidence.

¶ 12 We next turn to the trial court's best-interests determination. At this stage of the proceedings, the State must demonstrate by a preponderance of the evidence that it is in the child's best interests to have the parent's parental rights terminated. *D.T.*, 212 Ill. 2d at 366. The trial court's best-interests determination will not be disturbed on review unless it is against the manifest weight of the evidence. *M.R.*, 393 Ill. App. 3d at 617. When performing a best-interests determination, the trial court considers the following factors "in the context of the child's age and developmental needs":

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 13 Here, respondent did not offer any evidence during the best-interests hearing. The evidence regarding C.M., however, showed that she had been in foster care for more than three years. C.M.'s foster mother wanted to adopt her and provide C.M. with a permanent home. The evidence further showed that C.M. was receiving regular medical check-ups, was emotionally integrated into her foster family, and considered her foster mother to be her "mom" in every significant way. The evidence also showed that C.M. had developed a sense of stability and belonging with her foster family and had strongly bonded with her foster siblings and foster mother.

¶ 14 Reviewing the evidence and arguments of the parties, we conclude that the trial court's determination that it was in C.M.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence. When the evidence is considered in light of the best-interests factors, it is clear that the factors weigh heavily in favor of terminating respondent's parental rights. For example, the evidence clearly showed that the foster mother was amply providing for C.M.'s safety and welfare and that C.M. had integrated into her foster family and

identified her foster siblings as her brothers and sisters and her foster mother as her mother. Additionally, the foster mother wished to adopt C.M. and it was clear that C.M.'s need for stability would be best served by allowing such an adoption. All that respondent could offer was his expressed love for C.M., with whom he had little to no contact over the course of her life. While we accept respondent's expression of love as genuine, in light of the fact that respondent is incarcerated and will continue to be incarcerated until at least 2040, he can offer C.M. nothing but a vague and distant expression of love as he cannot have visits with C.M. Even if he were to have visits, the record indicated that they would not be personal visits, but would be conducted over a video link. Occasional and relatively brief video visitation would be the most that respondent could offer; he would be unable to provide for her safety, welfare, or financial needs; further, respondent cannot undertake any of the duties and obligations of parenting C.M. owing to his incarceration. Thus, there is nothing in the record to suggest that consideration of the best-interests factors should balance in any other way than the way the trial court determined. Further, there exist no arguably meritorious issues regarding the trial court's best-interests determination. Accordingly, we hold that the trial court's best-interests determination was not against the manifest weight of the evidence.

¶ 15 We note that, for the first time in these proceedings as well as for the first time on appeal, respondent suggests that custody of C.M. be given to his mother in some fashion. Respondent did not raise this issue below and cannot now raise it for the first time on appeal. *In re M.H.*, 2011 IL App (1st) 110196, ¶ 61. Accordingly, we hold that respondent has forfeited our consideration of this issue on appeal.

¶ 16 We also note that respondent, almost in passing, claims that he received no help from either his trial or appellate counsels. We do not deem that respondent has actually attempted to raise an

ineffective-assistance argument; rather, the assertions constitute an expression of discontent at the results of the proceedings regarding C.M.

¶ 17 After examining the record, counsel's motion to withdraw, and respondent's response to counsel's motion, we agree with counsel that this appeal presents no arguably meritorious issues. Accordingly, we grant counsel's motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 18 The judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.