

NOTICE
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2013 IL App (4th) 121005-U

NO. 4-12-1005

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 7, 2013
Carla Bender
4th District Appellate
Court, IL

In re: B.K., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 11JA17
ALICIA DAMICO,)	
Respondent-Appellant.)	Honorable
)	Chet W. Vahle,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Where respondent was unfit and it was in the minor's best interest that respondent's parental rights be terminated, and where no appealable issues were raised in the trial court, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 2 In April 2011, the State filed a petition for adjudication of wardship with respect to B.K., the minor child of respondent, Alicia Damico. The trial court adjudicated the minor a ward of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In August 2012, the State filed a motion to terminate respondent's parental rights. In October 2012, the court found respondent unfit and concluded it was in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, appellate counsel moves to withdraw her representation of respondent pursuant to *Anders v. California*, 386 U.S. 738 (1967), contending no meritorious issues can be

raised in this appeal. We grant appellate counsel's motion and affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5 In April 2011, the State filed a petition for adjudication of wardship with respect to B.K., born in March 2011, the minor daughter of respondent. The petition alleged B.K. was a neglected minor as her environment was injurious to her health and well-being. The trial court found it a matter of immediate and urgent necessity that B.K. be placed in shelter care.

¶ 6 In December 2011, the trial court found the minor was neglected, stating respondent had been previously found unfit due to neglect and an inability to parent and her parental rights had been terminated. Moreover, respondent was unable to safely and effectively parent and nurture the minor without significant support and supervision and no reason existed to believe the situation would change in the near future. In its January 2012 dispositional order, the court found it in the minor's best interest that she be made a ward of the court and placed in the custody and guardianship of DCFS.

¶ 7 In August 2012, the State filed a motion to terminate respondent's parental rights. The State alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the minor's removal from the parent (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) make reasonable progress toward the return of the minor within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) make reasonable progress toward the return of the minor in any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 8 In October 2012, the trial court conducted the hearing on the motion to terminate

parental rights. The State indicated the minor was adjudicated neglected on December 20, 2011, and the first nine-month period ended on September 20, 2012.

¶ 9 Jan Frageman, a behavioral-health therapist, testified she conducted a mental-health assessment of respondent in March 2012 to assess possible treatment. She found respondent's thought processes to be tangential, meaning she would talk about one thing and then "go to something else." Respondent also failed to have insight to see what is going on and understand it. Frageman diagnosed her with bipolar disorder, an anxiety disorder, and a moderate to severe case of depression. Respondent's general assessment indicated "serious impairment," including "trouble with functioning, doing daily functioning, taking care of herself, [and] showering." Frageman recommended respondent see a psychiatrist, have her medication monitored, and undergo therapy. Frageman testified she talked to respondent about her living with a registered sex offender, but respondent "struggled to see that there was a problem." Respondent failed to attend scheduled appointments on April 25, 2012, and May 4, 2012. She cancelled two appointments in May and three in June.

¶ 10 Janet Miller, a family service specialist, testified respondent was to provide formula, food, diapers, and care during visits. On April 5 and 12, 2012, respondent forgot to bring food. At the latter visit, respondent objected to removing a dirty diaper from the trash can in the visitation room to the trash in the restroom, although she eventually complied. On May 10, 2012, respondent did not bring food or diapers to the visit. Respondent was also late for numerous visits. Respondent cancelled the June 7, 2012, visit and did not show for the scheduled visit on June 14, 2012.

¶ 11 Erin Baker, a DCFS child welfare specialist, testified she became involved with

B.K. in April 2011. The May 2011 service plan required respondent to cooperate with DCFS, service providers, and the court; work toward obtaining disability benefits; undergo mental-health services; engage in parenting classes; attend visitation; and keep Baker informed on any legal matters. In evaluating the service plan in April 2012, Baker rated respondent unsatisfactory in cooperating with her because she was living with a person who refused to allow Baker into the home. Respondent later failed to inform Baker of a change of address. Respondent told Baker she stayed with one friend four nights of the week and with another friend the remainder of the week. Baker rated respondent as satisfactory pertaining to the goals of obtaining disability benefits, mental health, and parenting. Baker rated respondent as unsatisfactory as to visitation as she had been argumentative on several occasions. The legal goal was rated satisfactory as respondent signed a release to allow Baker to talk to her parole officer.

¶ 12 Baker testified she evaluated respondent's service plan again in August 2012 and rated her as unsatisfactory. Baker stated respondent was not cooperative and refused to undergo a psychological evaluation. The disability task was rated unsatisfactory because Baker had not been provided verification that she was in the process of applying for disability benefits. The mental-health task was rated unsatisfactory because she was not consistently attending and was not making progress. The parenting and visitation tasks were rated unsatisfactory. Baker stated the legal task was rated satisfactory as respondent was in compliance with her parole officer. Baker evaluated the final service plan in October 2012. The cooperation, disability, parenting, visitation, and legal tasks were rated unsatisfactory. Respondent would not state who she was living with and missed three appointments in July and September. The parenting and visitation goals were unsatisfactory because the visits with B.K. had been suspended.

¶ 13 Tricia Broughton, a DCFS child welfare specialist, testified she met with respondent in September 2012. Respondent stated she was living with a female friend but refused to give her name. Respondent did not like the early appointment times, claiming she had insomnia issues and could not get up in the early morning hours.

¶ 14 Following arguments, the trial court stated respondent had complied with some of the terms of her service plans but "her compliance with the significant terms of the service plan have been sporadic and irregular at best." The court stated the "net result" was respondent failed to follow the service plans to the extent necessary to show reasonable progress. The court found respondent unfit for failing to make reasonable efforts to correct the conditions that were the basis for minor's removal or to make reasonable progress toward the return of the minor to her within nine months after the adjudication of neglect.

¶ 15 The trial court then proceeded to the best-interest hearing. Baker testified B.K. had been in a traditional foster placement since April 2011. She is "very much attached" to her foster mother and is "affectionate" with her foster father. B.K. has a heart condition that will require surgery. She also had a misshapen head but no longer needs to wear a helmet. B.K.'s condition known as "torticollis," a preference for her right side, had been resolved through physical therapy. B.K.'s foster parents made sure she attended all of her medical appointments. They have expressed a desire and willingness to adopt B.K.

¶ 16 The trial court concluded it was in B.K.'s best interest that respondent's parental rights be terminated. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, appellate counsel has filed a motion to withdraw as counsel and has

attached to the motion a brief in support. See *In re Austin C.*, 353 Ill. App. 3d 942, 945, 823 N.E.2d 981, 983-84 (2004) (setting forth the *Anders* procedure for appellate counsel seeking to withdraw in cases involving the termination of parental rights) (citing *In re S.M.*, 314 Ill. App. 3d 682, 685-86, 732 N.E.2d 140, 143 (2000)). Proof of service of the motion has been shown upon respondent. This court granted respondent leave to file additional points and authorities on or before February 4, 2013. None have been filed. Transcripts of the relevant hearings have been provided online.

¶ 19 A. Unfitness Findings

¶ 20 Appellate counsel argues no appealable issue can be raised as to the trial court's findings of unfitness. We agree.

¶ 21 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). "A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make." *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing 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 Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139 (2007). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 22 In the case *sub judice*, the trial court found respondent unfit for failing to make

reasonable progress toward the return of the minor to her within nine months after the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2010). The initial nine-month period following the adjudication of neglect ended on September 20, 2012. "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future."

In re Janine M.A., 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

"At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 23 In this case, Frageman testified respondent missed scheduled appointments and struggled to see any problem in living with a registered sex offender. Miller testified respondent was often late for visits. Baker rated respondent unsatisfactory on numerous service plan goals. Respondent was argumentative during visits, she was not cooperative, she did not make progress on her mental-health task, she refused to state who she was living with, she missed appointments,

and her visits were suspended in May 2012.

¶ 24 The evidence clearly shows respondent failed to make reasonable progress that would demonstrate movement toward the goal of reunification with B.K. The trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the reasonable-efforts ground.

¶ 25 B. Best-Interest Findings

¶ 26 Appellate counsel argues no appealable issue can be raised as to the trial court's decision to terminate respondent's parental rights. We agree.

¶ 27 Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1139-40 (2001). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of

relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

Daphnie E., 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (4.05)(j) (West 2010).

¶ 28 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 29 Here, Baker testified B.K. had been in a traditional foster placement since April 2011, shortly after she was born. She is "very much attached" to her foster mother and is "affectionate" with her foster father. B.K.'s foster parents made sure she attended all of her medical appointments and have attended to her therapy needs. They have also expressed a desire and willingness to adopt B.K. Based on the evidence presented, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence. As respondent's appeal presents no meritorious issues for review, appellate counsel is granted leave to withdraw as counsel.

¶ 30 III. CONCLUSION

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

¶ 32 Affirmed.