2016 IL App (2d) 160092-U
Nos. 2-16-0092, 2-16-0093, 2-16-0094 cons.
Order filed June 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re B.P., Jr., M.P., and Y.P., Minors	)	Appeal from the Circuit Court
	)	of Boone County.
	)	
	)	Nos. 12-JA-28
	)	12-JA-29
	)	12-JA-30
	)	
(The People of the State of Illinois, Petitioner-Appellee v. Bato P., Sr., Respondent-Appellant).	)	Honorable
	)	Janet R. Holmgren,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Pursuant to *Anders v. California*, 386 U.S. 736 (1967), appellate counsel's motion to withdraw would be allowed and the judgment of the circuit court would be affirmed where no issues of arguable merit were identified on appeal concerning the court's rulings that respondent was shown to be unfit by clear and convincing evidence and that it was in the best interest of the minors that respondent's parental rights be terminated.

¶ 2 On January 7, 2016, the circuit court of Boone County found respondent, Bato P., Sr., to be an unfit parent with respect to his three minor children, B.P., Jr. (born September 29, 2006),

M.P. (born October 1, 2007), and Y.P. (born September 15, 2009).[1] Subsequently, the court concluded that the termination of respondent's parental rights was in the minors' best interest. Respondent then filed a notice of appeal.

¶ 3 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), appellate counsel has filed a motion for leave to withdraw. In her motion, counsel avers that she has carefully read the entire record and researched applicable law, but has not discovered any issue that would warrant relief on appeal. Attached to her motion, counsel submitted a memorandum of law summarizing the proceedings in the trial court, identifying any potential meritorious issues for appeal, and explaining why the issues lack arguable merit. Counsel states that she has served respondent with a copy of the motion by certified mail at his last known address and informed him of his opportunity to present additional material to this court within 30 days. The clerk of this court also notified respondent of the motion and informed him that he would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, and respondent has not presented anything to this court. For the reasons set forth below, we grant appellate counsel's motion to withdraw and affirm the judgment of the circuit court.

¶ 4 The Juvenile Court Act of 1987 sets forth a bifurcated procedure for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014). Under this procedure, the State must make a threshold showing of parental unfitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). If a court finds a parent unfit, the State must then show that termination of parental rights would serve the minor's best

[1] On the court's own motion, we will use initials to refer to the minors.

interest. See *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. In her memorandum of law, counsel discusses two issues: (1) whether the trial court's finding that respondent is an unfit parent is against the manifest weight of the evidence; and (2) whether the trial court's finding that it is in the minors' best interest that respondent's parental rights be terminated is against the manifest weight of the evidence. With respect to both issues, counsel argues that no meritorious argument could be made that the bases for the trial court's findings are against the manifest weight of the evidence. Having reviewed the record, we agree with counsel's assessment as to both potential issues.

¶ 5 A. Unfitness

¶ 6 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) lists various grounds under which a parent may be found unfit. *Antwan L.*, 368 Ill. App. 3d at 1123. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2014); *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. As such, a trial court's determination of a parent's unfitness will not be reversed unless it is contrary to the manifest weight of the evidence. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A decision is contrary to the manifest weight of the evidence only "if a review of the record 'clearly demonstrates that the proper result is the one opposite that reached by the trial court.' " *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 7 Here, the State filed three separate motions to terminate respondent's parental rights, one for each minor. In each motion, the State set forth six grounds of unfitness: (1) abandonment of the minor (750 ILCS 50/1(D)(a) (West 2014)); (2) failure to maintain a reasonable degree of

interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (3) desertion of the minor for more than three months next preceding the commencement of the termination proceeding (750 ILCS 50/1(D)(c) (West 2014)); (4) failure to make reasonable progress toward the return of the minor to the parent within nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); (5) failure to make reasonable progress toward the return of the minor to the parent during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (6) evidence of respondent's intent to forgo his parental rights by failure for a period of 12 months to visit the minor, communicate with the minor, or maintain contact with or plan for the future of the minor although physically able to do so (750 ILCS 50/1(D)(n)(i)-(iii) (West 2014)). For the purposes of the fourth and fifth counts of unfitness, the State filed a separate notice as to each motion, listing three separate nine-month periods. See 750 ILCS 50/1(D)(m) (West 2014). The trial court found respondent unfit on four of the six grounds alleged in the State's motions: (1) abandonment; (2) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare; (3) failure to make reasonable progress toward the return of the minors to him within nine months following the adjudication of neglect; and (4) failure to make reasonable progress toward the return of the minors during any nine-month period after the end of the initial nine-month period following the adjudication of neglect.

¶ 8 In the memorandum of law in support of her motion to withdraw, appellate counsel argues that no meritorious argument could be made that respondent is not unfit. Initially, appellate counsel focuses on the trial court's finding that respondent was unfit for failure to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare

pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). Since the language of section 1(D)(b) is in the disjunctive, any one of the three individual elements, *i.e.*, interest *or* concern *or* responsibility, may be considered by itself as a basis for unfitness. 750 ILCS 50/1(D)(b) (West 2014); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. In determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, a court considers a parent's efforts to visit and maintain contact with the child as well as other indicia, such as inquiries into the minor's welfare. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Completion of service plans may also be considered as evidence of a parent's interest, concern, or responsibility. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. The court must focus on the parent's efforts, not on his or her success. *Syck*, 138 Ill. 2d at 279; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. In this regard, the court examines the parent's conduct concerning the child in the context in which it occurred. *Syck*, 138 Ill. 2d at 278; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Accordingly, circumstances such as difficulty in obtaining transportation, poverty, actions and statements of others that hinder visitation, and the need to resolve other life issues are relevant. *Syck*, 138 Ill. 2d at 278-79; *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Furthermore, if personal visits with the minor are somehow impractical, other methods of communication, such as letters, telephone calls, and gifts, may demonstrate a reasonable degree of interest, concern, or responsibility, "depending upon the content, tone, and frequency of those contacts under the circumstances." *Syck*, 138 Ill. 2d at 279. We are mindful, however, that a parent is not fit merely because he or she has demonstrated *some* interest or affection toward a child. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. Rather, the interest, concern, or responsibility must be objectively reasonable. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31.

¶ 9 The evidence presented at the unfitness portion of the termination proceeding establishes that the Illinois Department of Children and Family Services (Department) took protective custody of the three minors on September 17, 2012, shortly after a fourth sibling, A.B., was born substance exposed. A client service plan was prepared for respondent, requiring him to cooperate with the Department and engage in a variety of tasks, including a domestic-violence assessment, domestic-violence counseling, individual counseling, and random drug drops. Respondent was also asked to engage in visitation. Callie Broege, a caseworker for the Department, received the case in April 2013. Broege testified that respondent visited the minors sporadically between September 2012 and April 2013. Shortly after Broege was assigned, she learned that respondent had been arrested and was incarcerated. Broege forwarded a copy of the service plan to respondent's prison address and instructed him to document any tasks in which he participated while incarcerated and to notify the Department upon his release from prison. Respondent received Broege's correspondence, but did not engage in any of the requested services. Further, respondent never sent the minors any letters, cards, gifts, clothes, or money, and he never inquired about their health or welfare.

¶ 10 In December 2013, the case was transferred to Diana Escobedo. During Escobedo's tenure as caseworker, respondent did not report his participation in, or completion of, any services, he did not inquire about the minors' health or welfare, and he did not send the minors any cards, gifts, or letters. Gabriella De La Fuente, of Children's Home and Aid, was the third caseworker assigned to the matter. De La Fuente testified that respondent sent her one letter asking about the minors' well-being and requesting pictures of the children. In response, De La Fuente requested information regarding the services in which respondent had engaged while in prison. Respondent never replied to De La Fuente's request. De La Fuente also testified that

respondent never notified her when he was released from prison. Moreover, upon his release from prison, respondent did not inquire about the minors' health, safety, or welfare, and he did not send them any cards, gifts, or letters.

¶ 11 Respondent acknowledged receiving correspondence from the Department and its agencies during his incarceration. He testified that it was difficult to respond to the letters or engage in services because he was in segregation. Respondent explained that segregation is "when you're incarcerated and you get into another trouble in there." Respondent indicated that he contacted his attorney about the minors when he left prison. He also related that he wanted to engage in the requested services upon his release from prison, but had no way to pay for them.

¶ 12 As the foregoing establishes, from the inception of the minors coming into care, other than sporadic visitation prior to his incarceration, respondent did not engage in or successfully complete any requested services or otherwise work toward having the minors placed in his care. Furthermore, while visits with the minors may have been impractical while respondent was incarcerated, he made virtually no effort to interact with the minors by other means. For instance, he did not send the minors any cards, letters, gifts, or monetary support. In addition, respondent inquired about the health, safety, and welfare of the minors on only one occasion. Respondent attributed his failure to engage in services during his incarceration to the fact that he was in segregation while incarcerated. Yet, as respondent seemingly acknowledged, he was segregated because of his own misconduct while in prison. We also note that respondent failed to communicate with the caseworker after he left prison regarding visitation with the minors or the minors' welfare. Indeed, he did not even notify the caseworker that he had been discharged from prison. In light of this evidence, we agree that counsel could not make a colorable argument that the trial court's finding that respondent is unfit for failure to maintain a reasonable

degree of interest, concern, or responsibility as to the minors is against the manifest weight of the evidence. Since evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness, we need not address any other ground of unfitness found by the trial court. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30.

¶ 13 B. Best Interest of the Minors

¶ 14 Having concluded that no meritorious argument could be made that the basis for the trial court's finding of unfitness is against the manifest weight of the evidence, we turn to the trial court's best-interest determination. As noted earlier, once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interest. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. As our supreme court has noted, at the best-interest phase, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a minor's best interest. These considerations include: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with parental figures; (5) the minor's wishes and goals; (6) community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. 705 ILCS 405/1-3 (4.05) (West 2014). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interest of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like the

unfitness determination, we review the trial court's best-interest finding under the manifest-weight-of-the-evidence standard. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41.

¶ 15 In the present case, the evidence presented at the best-interest phase establishes that the minors have resided in their current placement since being taken into protective custody. The foster parents are the minors' maternal aunt and her husband. The foster parents and the minors reside in a home with another maternal aunt, a maternal uncle, and the maternal grandfather. The minors refer to the foster parents as "mom" and "dad." The foster mother testified that she considers the minors her children. She noted that although the two younger children have learning disabilities, they, like B.P., are doing well in school. The foster mother also noted that the minors have many friends in the neighborhood and are happy in their placement. The minors have never referred to respondent as their father, and respondent has never provided the minors with any cards, gifts, or letters. The trial court reviewed this evidence in light of the factors set forth in the previous paragraph and determined that it is in the minors' best interest to terminate respondent's parental rights. Given the record before us, we agree with appellate counsel that a non-frivolous argument cannot be made that the trial court's finding is against the manifest weight of the evidence.

¶ 16 III. CONCLUSION

¶ 17 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and the relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Therefore, we allow the motion of appellate counsel to withdraw in this appeal, and we affirm the judgment of the circuit court of Boone County finding respondent unfit and terminating his parental rights to the minors.

¶ 18 Affirmed.