2017 IL App (2d) 161073-U
No. 2-16-1073
Order filed April 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re OMARDIAN L., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 15-J-1
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Diane L., Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We granted appellate counsel's motion to withdraw and affirmed the trial court's judgment, as there were no issues of arguable merit regarding the trial court's rulings that respondent was unfit and that it was in the minor's best interests for respondent's parental rights to be terminated.

¶ 2 On November 15, 2016, the trial court found that respondent, Diane L., was an unfit parent with respect to her son, Omardian L., born on December 19, 2014. It subsequently ruled that it was in Omardian's best interests that respondent's parental rights be terminated. Respondent filed a notice of appeal, and the trial court appointed counsel to represent her on appeal. Pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Keller*, 138 Ill. App. 3d 746 (1985), appellate counsel has sought leave to withdraw, arguing

that no meritorious issue exists. Appellate counsel has filed a memorandum of law in support of his motion and represents that he has mailed respondent a copy of the motion to withdraw. The clerk of this court has also notified respondent of the motion and informed her that she would have 30 days to respond. More than 30 days have passed, and respondent has not submitted a reply to the motion.

¶ 3 The potential issues that appellate counsel has raised are: (1) whether the trial court's finding that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to Omardian's welfare was against the manifest weight of the evidence; (2) whether the trial court's finding that respondent was unfit for failing to make reasonable progress during any nine-month period following the adjudication of dependency was against the manifest weight of the evidence; and (3) whether the trial court's finding that termination of respondent's parental rights was in Omardian's best interest was against the manifest weight of the evidence. For the reasons that follow, we grant appellate counsel's motion to withdraw.

¶ 4 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id.* A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re M.I.*, 2016 IL 120232, ¶ 43. We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 26. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 28.

¶ 5 On September 27, 2016, the State filed a petition alleging that respondent was unfit in that she had: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to Omardian's welfare (750 ILCS 50/1(D)(b) (West 2014)); and (2) failed to make reasonable progress towards the return of Omardian within any nine-month period after his adjudication as a dependent minor (750 ILCS 50/1(D)(m)(ii) (West 2014)), specifically October 22, 2015, to July 22, 2016, and/or December 26, 2015, to September 16, 2016. The trial court found respondent unfit on both of these grounds.

¶ 6 In his memorandum of law in support of his motion to withdraw, appellate counsel argues that no non-frivolous argument could be made that respondent is not unfit, despite her demonstrated love for Omardian.

¶ 7 The evidence presented at the fitness hearing, including the exhibits, revealed the following. When Omardian was born, the hospital staff was concerned that respondent and her husband were not meeting minimum parenting standards, so the staff set up a 48-hour observation period where the parents would be assisted and observed. The parents were unable to meet Omardian's basic physical needs, including making formula, feeding him, and taking his temperature. Therefore, the Department of Children and Family Services (DCFS) took protective custody of Omardian, and he was subsequently adjudicated dependent.

¶ 8 DCFS required respondent to engage in parenting classes, parent coaching, and individual therapy. She followed through with all of the required services. However, the amount of information that she was able to comprehend in the parenting classes was questionable, and she was not able to show any significant gains. Respondent's progress in individual counseling was also questionable, as she still expressed confusion about why the case came into care even though it had been explained to her numerous times by the case manager and her counselor.

Respondent participated in visitation with the minor, but she never progressed to unsupervised visitation because she required a lot of direction as to how to engage with Omardian, and her expectations of him were irrational. Omardian also had developmental delays, which required additional parenting competency. A psychological assessment and a parenting capacity assessment further reflected respondent's inability to parent, including that she had an IQ score of 64, which put her in the extremely low range of intellectual functioning, and that she was functionally illiterate. It did not appear that respondent was learning what DCFS and the service providers were teaching her, and she was resistant to suggestions. Respondent additionally had irrational beliefs about what constituted a safe environment for a child, such as thinking that it was ok to have roaches in her apartment.

¶ 9 Respondent testified that she fed Omardian and changed his diaper at the hospital and during visits. Roaches were a problem in her entire apartment building, and she had been buying products to counteract them and had spoken to the landlord. When asked why Omardian was taken from her at the hospital, respondent answered, "That's why I keep asking myself, what did I do wrong? Is it because I was asking questions at the hospital?" She stated that she was concerned because Omardian was born prematurely and "had a whole bunch of wires."

¶ 10 The aforementioned evidence clearly demonstrates that the trial court's finding of unfitness based on lack of reasonable progress cannot be said to have been against the manifest weight of the evidence. Reasonable progress is defined as " 'demonstrable movement toward the goal of reunification,' " (*In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000))), and it is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of

the child to the parent. *Id.* at 216-17. Here, after engaging in services for almost two years, respondent still did not understand why Omardian was taken from her at the hospital. She consistently attended the required services, but she appeared unable to sufficiently comprehend what was being taught. This may have been due to her low level of intellectual function, but a parent's mental deficiencies do not eliminate the requirement of making measurable progress towards the return home of the child. See *In re J.P.*, 261 Ill. App. 3d 165, 175-176 (1994); see also *In re Devine*, 81 Ill. App. 3d 314, 320 (1980) (a "child is no less exposed to danger, no less dirty or hungry because his parent in unable rather than unwilling to give him care"). Moreover, respondent actively resisted the parenting suggestions offered. She never progressed towards unsupervised visitation, much less reunification, which shows a lack of reasonable progress.

¶ 11 As a finding of parental unfitness may be based upon evidence sufficient to support a single statutory ground (*In re H.S.*, 2016 IL App (1st) 161589, ¶ 31), we need not comment on the trial court's finding that respondent also failed to maintain a reasonable degree of responsibility as to Omardian's welfare.

¶ 12 We now turn to the trial court's best interest determination. If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008). A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65. Still, during the best interest hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court considers various statutory factors of the Juvenile Court Act in light of the child's age and

developmental needs. 705 ILCS 405/1-3(4.05) (West 2014). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48. The State must show by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 53. We will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *Id.* ¶ 54.

¶ 13 At the best interest hearing, the caseworker provided the following testimony. Omardian had been living with the same foster family for about 18 months, since he was about four months old. The foster parents also had three biological children. Omardian was nonverbal, but the caseworker could tell from his interactions that he was very bonded to the family, in that he reached out to them and looked to them for security. The family was very attentive to Omardian and had a safe and appropriate home. They provided for his basic needs, were committed to making sure he engaged in all of the necessary services for his developmental delays, and were willing to adopt him.

¶ 14 The evidence regarding Omardian's long-term placement with his foster family, his attachment to them, their ability to provide a safe home environment and attend to his special needs, and their willingness to adopt him, is in stark contrast to respondent's inability to apply even basic parenting skills. We therefore agree with appellate counsel that no meritorious argument can be made that the trial court's finding, that it was in Omardian's best interest for respondent's parental rights to be terminated, was against the manifest weight of the evidence.

¶ 15 III. CONCLUSION

¶ 16 After carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Accordingly, we grant appellate counsel's motion to withdraw, and we affirm the judgment of the Winnebago County circuit court finding respondent unfit and terminating her parental rights to Omardian.

¶ 17 Affirmed.