2018 IL App (2d) 180213-U
No. 2-18-0213
Order filed September 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re Damya B-A.,[1] Dakyah B., and Derihanna B-A.,	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 15-JA-385 15-JA 386 15-JA-387
(The People of the State of Illinois, Petitioner-Appellee v. Kimberly S. B., Respondent-Appellant).	)	Honorable Francis M. Martinez, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: This court granted appointed appellate counsel's second motion to withdraw pursuant to *Anders v. California* and affirmed the judgment of the trial court where the appeal presented no meritorious issues and was frivolous. The State proved by clear and convincing evidence that respondent was unfit and that termination of parental rights was in the best interests of the children; therefore, the appellate court held that the trial court's determination to terminate

[1] At various places in the record this minor's name is also spelled Da'Mya or Dmaya.

respondent's parental rights was not against the manifest weight of the evidence or an abuse of discretion.

¶ 2 Respondent, Kimberly S. B., the mother of Damya B-A., Dakyah B., and Derihanna B-A., appeals from the trial court's orders finding her to be an unfit parent and terminating her parental rights.[2] Appointed appellate counsel originally filed an insufficient motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there are no meritorious issues on appeal. On May 9, 2018, the clerk of the appellate court notified respondent that within 30 days she could file additional matters that she felt were meritorious or reasons why the motion to withdraw should not be allowed. Respondent failed to file anything. This court denied the original *Anders* motion without prejudice and allowed counsel to file a brief in support of respondent's appeal or to file a second *Anders* motion that complied with *In re Alexa J.*, 345 Ill. App. 3d 985, 988 (2003). On August 13, 2018, counsel filed a second *Anders* motion, and, on that date, the clerk again notified respondent that within 30 days she could file additional matters or reasons why the motion to withdraw should not be allowed. Respondent again has not filed a response. Accordingly, after examining the record and counsel's second motion and memorandum in support thereof, we grant the motion to withdraw and affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 On October 8, 2015, respondent brought four-year-old Damya to the emergency room at

[2] This court's disposition was due to be filed on August 16, 2018. However, on August 2, 2018, we entered an order denying without prejudice appointed counsel's insufficient motion to withdraw and giving him 14 days within which to file a brief or a new motion to withdraw. On August 13, 2018, counsel filed a compliant new motion to withdraw. Thus, there was good cause for the delay.

Rockford Memorial Hospital with vomiting and diarrhea. Damya weighed 25 pounds and was suffering from acute renal failure, dehydration, prerenal azotemia, and failure to thrive. Damya was behind on her immunizations and had not seen her primary care doctor since 2011. The emergency room physician found that Damya's condition was "highly suspicious" for neglect. The hospital notified the Illinois Department of Children and Family Services (DCFS), which took protective custody of Damya.

¶ 5 On October 13, 2015, the State filed a two-count neglect petition alleging in count I that Damya was under the age of 18 and was not receiving the proper or necessary support, education, medical, or other remedial care necessary for her well-being, in violation of section 2-3(1)(a) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a) (West 2014)). Count II alleged that Damya was under 18 years of age and that her environment was injurious to her welfare, in violation of section 2-3(1)(b) of the Act (705 ILCS 405/2-1(b) (West 2014)). The record showed that Damya's father, Barnett A., was deceased. Based on the allegations with regard to Damya, DCFS also took custody of Dakyah and Derihanna. Another of respondent's minor children, Demarice, was already the subject of a separate neglect petition. Demarice's case was joined with the instant case in the trial court, but it is not part of the present appeal.

¶ 6 On October 13, 2015, respondent waived her right to a shelter care hearing, and she stipulated to a finding of probable cause. Based on that stipulation, the court granted DCFS temporary guardianship of the minors with discretion to place them with a responsible relative or in traditional foster care.

¶ 7 On January 4, 2016, the State filed amended neglect petitions. On April 28, 2016, respondent stipulated to count VI of each petition, alleging that the minors' environment was injurious to their welfare. Respondent agreed that the minors would be adjudicated neglected and

be made wards of the court. Respondent further agreed to allow DCFS to assume permanent guardianship with the right to place the minors. The State dismissed the remaining counts of the amended petitions. The court admonished respondent of her right to appeal, as well as her obligation to cooperate with DCFS and to engage in services over the next nine months. The court advised respondent that her failure to make progress or to make efforts over the next nine months could result in the State filing a petition to terminate her parental rights. According to the record, respondent nodded her head affirmatively after hearing each admonishment.

¶ 8 The first permanency review was held on October 11, 2016. The court found that respondent had made reasonable efforts, and the goal remained for the minors to return home within one year. The second permanency review was held on March 27, 2017. Respondent was not present at that hearing. The record reflects that respondent failed to engage in her service plan, which included individual counseling, completion of a parenting class, and substance abuse treatment. Specifically, respondent was unsuccessfully discharged from individual counseling because of nonattendance. She also went to parenting classes in an extremely intoxicated condition, and she was unable to maintain sobriety. The court found that respondent had not made reasonable efforts, but it maintained the goal of return home. The third permanency review was held on August 15, 2017. The record showed that respondent failed to attend her intake appointment for parenting classes but that she had completed substance abuse services. She was attending the Project SAFE program, and she was looking for work. The court found that respondent had not made either reasonable efforts or reasonable progress. The court characterized respondent's behavior as "constant false starts." The court changed the permanency goal to "substitute care pending termination of parental rights."

¶ 9 On September 14, 2017, the State filed a "motion for termination of parental rights and

power to consent to adoption" related to each child. In each petition, the State alleged that respondent was unfit in that she (1) failed to make reasonable efforts toward the return of the children during the nine-month period following the adjudication, being 10/12/16 to 7/12/17 and/or 11/15/16 to 8/15/17, (2) failed to make reasonable progress toward the return of the children during the same time periods as alleged in count I, and (3) failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare.

¶ 10 The court conducted an evidentiary hearing on the petitions for termination on November 6, 2017. The court took judicial notice of documents and orders in the file, and then the State called Sylvia Kulig, respondent's caseworker at Lutheran Social Services (LSSI), to testify at the unfitness portion of the hearing. Kulig testified that Dakyah was 10, Derihanna was 8, and Damya was 6. According to Kulig, respondent was currently attending individual counseling and substance abuse treatment. Respondent had completed parenting classes the previous October. Kulig testified that, in April 2016, respondent had been unsuccessfully discharged from all three required services: individual counseling, parenting classes, and substance abuse treatment. Kulig testified that respondent was unsuccessfully discharged more than once from substance abuse treatment and individual counseling. Kulig also testified that respondent had relapses in sobriety in 2016. However, according to Kulig, respondent began engaging in services in June 2017 and was still participating. In Kulig's opinion, respondent had changed her attitude since early March 2017.

¶ 11 The State rested, and respondent testified on her own behalf. According to respondent, she relapsed in November and December 2016 and began drinking again because she felt that she had failed as a parent. She admitted that she was drinking the entire summer of 2016 and did not try to get sober. Respondent also agreed that, even though her children had been taken away

from her, she did not make any efforts to rectify the problem. Respondent acknowledged that, because she was not sober, she could not participate in individual counseling or parenting classes. Respondent testified that she had no insight into her problem, but that in approximately April 2017 she became motivated to change. She testified that she now had a job, attended substance abuse meetings, and worked with a counselor. Respondent testified that she would not relapse in the future because of her will to change. She told the judge directly that she knew that she had "messed up in the beginning," but she pleaded with him to return her children to her. That concluded the evidence as to unfitness. On December 5, 2017, the court found that the State had proved all three counts by clear and convincing evidence.

¶ 12 On February 1, 2018, the court heard evidence regarding the best interests of the minors. Caseworker Shakeena Lane testified that Dakyah, Derihanna, and Damya had been living with their paternal grandmother in Chicago since November 2015. Lane testified that the grandmother provided the minors with their necessities and that the girls were attending school. Two aunts and a male cousin also provided care. According to Lane, the children were in therapy. Lane testified that the girls would like their grandmother to adopt them. Lane acknowledged that the girls also had a close relationship with respondent. Respondent testified that she told the girls that she had completed all of her services and was fighting to get them back. According to respondent, they did not like living with their grandmother. At a continued hearing, the guardian *ad litem* told the court that the girls preferred to remain with their grandmother.

¶ 13 The court found that the children were integrated into their foster placement with the grandmother, were well taken care of, and had bonded. The court also found that the prognosis for reunification with respondent was poor and that it was in the children's best interests to terminate respondent's parental rights. Respondent filed a timely appeal.

¶ 14 II. ANALYSIS

¶ 15 In accordance with *Alexa J.*, 345 Ill. App. 3d at 988, appellate counsel has identified one potentially justiciable issue, that is, whether the trial court's decision to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 16 The Act provides a two-step process for the involuntary termination of parental rights. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must prove that the parent is unfit by clear and convincing evidence. *Deandre D.*, 405 Ill. App. 3d at 952. Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) lists the grounds under which a parent can be found unfit. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Second, if the court makes a finding of unfitness, the court then considers whether it is in the best interest of the minor to terminate parental rights. *Deandre D.*, 405 Ill. App. 3d at 952. The State has the burden of proving by a preponderance of the evidence that termination is in the minor's best interests. *Deandre D.*, 405 Ill. App. 3d at 953. The appellate court will reverse a finding of unfitness only where it is against the manifest weight of the evidence, that is, where the opposite conclusion is clearly evident. *Deandre D.*, 405 Ill. App. 3d at 952. The reviewing court will reverse a best-interests finding only where it is against the manifest weight of the evidence or where the trial court has abused its discretion. *Deandre D.*, 405 Ill. App. 3d at 953.

¶ 17 Section 1(D)(m) of the Adoption Act contains three separate grounds, any one of which can serve as a basis for a finding of unfitness. 750 ILCS 50/1(D)(m) (West 2014). Subsection (i) deals with a parent's failure to make "reasonable efforts" to correct conditions that were the basis for the minor's removal; subsection (ii) deals with a parent's failure to make "reasonable progress" toward the return of the minor within nine months after an adjudication of neglect; subsection (iii) deals with a parent's failure to make "reasonable progress" toward the return of

the minor during "any nine month period" after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(i)-(iii) (West 2014).

¶ 18 In addition, section 1(D)(b) of the Adoption Act provides that a parent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare is a ground for a finding of unfitness. 750 ILCS 50/1(D)(b) (West 2014).

¶ 19 With respect to the unfitness finding, appellate counsel noted that, as of the time of trial, respondent had attained sobriety and insight into her addiction, and she was motivated to do those things that she should have done earlier to achieve reunification with her children. Counsel concludes that this argument on her behalf is "too little too late," because during the relevant time periods respondent did not complete critical services, nor did she demonstrate sobriety. At the unfitness hearing, the focus is on the parent's conduct corresponding to the grounds of unfitness alleged by the State. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Here, during the relevant time periods, respondent was unsuccessfully discharged from individual counseling and from parenting class. She tested positive for alcohol as well. Consequently, we agree with counsel that there is no nonfrivolous argument to be made to reverse the finding of unfitness.

¶ 20 With respect to best interests, counsel concludes that there is no nonfrivolous argument to be made either. At a best-interests hearing, the parent's interest in maintaining the parent-child relationship yields to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d at 364. The issue is no longer whether the relationship can be terminated, but whether it should be terminated. *D.T.*, 212 Ill. 2d at 364. In determining the best interests, the court considers the following factors: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's

wishes and long term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering into and being in substitute care; and (10) the preferences of those available to care for the child. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. The court found that the evidence supported termination of respondent's parental rights. Specifically, the court found that the children were well taken care of in their foster placement, that they had bonded well, and that all of their needs were met. The court further found that the prognosis for reunification with respondent was poor, and the failure to terminate her parental rights would lead to an indefinite period of uncertainty and a lack of permanency for the children. Respondent testified that her children wanted to come home and that they did not like their foster placement, but that was contradicted by the guardian *ad litem*, who testified that the children wished to remain in foster placement. Our review of the record accords with appellate counsel's assessment that the evidence so overwhelmingly supports the trial court's determination that termination was in the children's best interests that there are no meritorious arguments to be made on respondent's behalf. Accordingly, we hold that the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 23 Affirmed.