2018 IL App (2d) 180708-U
No. 2-18-0708
Order filed December 3, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.C, L.C., L.C., and R.C., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 15-JA-426, 15-JA-427, 15-JA-428,
	)	and 15-JA-429
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Richard C., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw is granted as there were no issues of arguable merit regarding the trial court's findings that respondent father is unfit and that it is in the minors' best interests for his parental rights to be terminated.

¶ 2 Respondent, Richard C., appeals the trial court's rulings that (1) he was an unfit person under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016) (the Act)) and (2) the termination of his parental rights was in the best interests of J.C., L.C., L.C., and R.C, ages 4, 6, 7, and 10, respectively. Respondent's appointed appellate counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting that there are no issues of

arguable merit to be raised on respondent's behalf. For the following reasons, counsel's motion is granted.

¶ 3 I. BACKGROUND

¶ 4 In November 2015 the State filed a petition alleging that respondent's children, J.C., L.C., L.C., and R.C. (collectively "minors"), were neglected due to substance abuse and domestic violence between respondent and the mother of the children and unsanitary and inadequate living conditions. At that time, respondent was incarcerated due to committing an aggravated domestic battery against the minors' mother. He remained incarcerated for the duration of these proceedings.[1]

¶ 5 On December 3, 2015, respondent voluntarily waived his right to a shelter care hearing. The trial court found that there was probable cause that the minors were neglected and that there was an urgent and immediate necessity to remove the minors from their mother's care. The court ordered temporary guardianship and custody of the minors to be placed with the Department of Children and Family Services (DCFS). DCFS prepared a family service plan for respondent. The plan required respondent to maintain contact with the minors through letters written to the service provider, successfully complete a drug and alcohol treatment program, participate in any available education, employment, or training program while incarcerated, and participate in either domestic-violence classes or individual counseling to address his violent history with the minors' mother.

¶ 6 The minors were adjudicated neglected on April 4, 2016. For the next two-and-a-half years, the court held six permanency hearings and consistently found that while respondent made

[1] The mother and mother's eldest child, who is not respondent's biological child, are not a part of this appeal.

reasonable efforts toward completing the tasks required of him in the service plan, he made no reasonable progress to the return of the minors to his custody.

¶ 7 On May 9, 2018, the State filed a motion to terminate respondent's parental rights. Following a two-day hearing on unfitness, the trial court found respondent unfit on three counts: (1) he failed to make reasonable progress toward the return of the minors to him during two nine-month periods following the minors being adjudicated neglected (750 ILCS 50/1D(m)(ii) (West 2016)); (2) he failed to protect the minors from injurious conditions in their environment (750 ILCS 50/1D(g) (West 20116)); and (3) he was depraved (750 ILCS 50/1D(i) (West 2016)). Upon the determination of unfitness, the trial court conducted a hearing on the best interests of the minors. The court determined that it was in the best interests of the minors to terminate respondent's parental rights. Accordingly, on August 24, 2018, the court entered an order terminating respondent's parental rights and granted DCFS the power to consent to adoption.

¶ 8 On August 31, 2018, respondent timely appealed. Appellate counsel was appointed to represent respondent. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738. In his motion, counsel asserts that there are "no non-frivolous issues" and that he submitted a memorandum of law to the court "outlining all issues which might arguably support an appeal and explaining why those issues are meritless." Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time has now passed, and he has not responded. We review counsel's request below.

¶ 9 II. ANALYSIS

¶ 10 At the outset, we note that an *Anders* brief must follow specific guidelines as outlined in *Alexa J.*, 345 Ill. App. 3d 985 (2003). "As a threshold matter in a nonmeritorious termination-of-parental-rights appeal, counsel should state in the introduction to the argument portion of the

Anders brief that he or she has reviewed both the finding of unfitness and the best interest determination." *Alexa J.*, 345 Ill. App. 3d at 989. Because counsel has a duty to advocate on behalf of his client, the brief must refer to anything in the record that might arguably support the appeal. *Alexa J.*, 345 Ill. App. 3d at 987. Counsel *must sketch* the argument in support of the issues that could be conceivably raised on appeal and *explain why* counsel believes they are frivolous. *In re J.P.* 2016 IL App (1st) 161518, ¶ 6. "Then, counsel must conclude that no viable grounds exist for the appeal." *Id.* Finally, to properly fulfill his responsibilities under *Anders*, counsel should attach transcripts of the fitness and best interests hearings. *Alexa J.*, 345 Ill. App. 3d at 988-9.

¶ 11 The document that counsel submitted to this court barely meets the threshold of an acceptable *Anders* brief. Riddled with misspellings, grammatical errors, and incorrect case citations, counsel's brief is mostly copy-and-pasted portions from the record with little analysis in its argument. The argument portion is broken down into a section on unfitness and best interests, but does not reference "anything in the record" that could support respondent's appeal. It lacks a sufficient "sketching" of respondent's potential arguments regarding the trial court's best interests determination and provides no analysis as to why counsel believes the issues are frivolous in the argument section, resting solely on a block quote from the trial court's findings. Interestingly, in the conclusion, counsel finally touches upon the trial court's findings of best interests and determines that "the adoption of these children by these adoptive parents is the best result for both the children and the father." We remind counsel that he must, "to the extent possible, remain as an advocate of the client. The attorney may not act as an unbiased judge of the merits of the appeal." *In re Brazelton*, 237 Ill. App. 3d 269, 271 (1992)). Despite the brief's overwhelming shortcomings, our own thorough review of the record shows that there are no

issues of arguable merit and the trial court's findings are not against the manifest weight of the evidence.

¶ 12 The termination of parental rights is a two-step process; first, the State must prove by clear and convincing evidence that a parent is unfit under any ground listed in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2016); see *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16. If the trial court finds that a parent is unfit, then the matter progresses to a second hearing where the State must prove by a preponderance of the evidence that the termination of the parent's rights is in the childrens's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. A trial court's findings of unfitness and best interests will not be disturbed on review unless they are contrary to the manifest weight of the evidence. *In re H.S*, 2016 IL App (1st) 161589, ¶ 23. A court's decision is against the manifest weight of the evidence only if the decision is unreasonable, arbitrary, or not based on the evidence or if the opposite conclusion is clearly apparent. *Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 13 Counsel correctly notes that even if there were any arguments to be made regarding the trial court's findings of unfitness based on respondent's reasonable efforts or the injurious environment, respondent would be unable to rebut the presumption of depravity. If proven, any one ground of unfitness is sufficient to find a parent unfit. *H.S.*, 2016 IL App (1st) 161589, ¶23. A respondent is deemed depraved, meaning that respondent has an inherent deficiency of moral sense and rectitude, if the State establishes that the respondent has deficient morals and an inability, or an unwillingness, to conform to accepted morality. *In re P.J.*, 2018 IL App (3d) 170539, ¶ 13. If a parent has been criminally convicted of at least three felonies and at least one of the convictions occurred within five years of the filing of the motion to terminate his parental rights, a rebuttal presumption that he is depraved exists. 750 ILCS 50/1(D)(i) (West 2016).

¶ 14 Here, the trial court noted that the presumption of depravity may be rebutted by showing that respondent could live out in the community with a moral lifestyle, but "[t]hat has not occurred in this case." At the unfitness hearing, respondent testified that he had several felony convictions on his record, stemming back to four felony convictions for possession of controlled substance in 1991, 1994, 1998, and 2000. He acknowledged that he had three separate domestic violence convictions against the minors' mother on his record. The State then introduced into evidence court records from respondent's more recent convictions, including a misdemeanor battery dated August 1, 2007; a class 4 felony domestic battery against the minors' mother dated November 17, 2008; another class 4 felony domestic battery against the minors' mother dated June 24, 2015; and finally, a class 2 felony aggravated domestic battery against the minors' mother dated December 21, 2015.

¶ 15 Respondent testified that after his 2015 aggravated battery conviction, he has attended both narcotics and alcoholics anonymous meetings and participated in, but did not finish, anger management classes. While incarcerated, respondent testified that he has not provided any housing, clothing, food, or financial assistance for the minors, nor has he attended any appointments for the minors. He agreed that he has not been able to "exercise any of his parental responsibilities" due to his incarceration. However, he was able to visit with the minors while in prison. He testified that he spoke with the minors about the possibility of the minors being adopted by their respective foster parents. "I was able to *** let [the minors] know that *** [the foster parents are] gonna be their new mom and new dad. So I wanted [the minors] to respect [the foster parents] the same way they respecting me."

¶ 16 In finding that respondent did not rebut the presumption of depravity, the trial court pointed to respondent's history of felony convictions stemming back to 1991 and identified two

felony convictions within five years of the State's termination petition. The court noted respondent's continued pattern of violence against the minors' mother as well as the fact that he remained incarcerated throughout the entirety of the proceedings in finding respondent had failed to rebut the presumption of depravity.

¶ 17 We have thoroughly reviewed the record, and we agree with the trial court that respondent did not present sufficient evidence to rebut the presumption of depravity. Respondent admitted to several felony convictions, and the State presented evidence of respondent's convictions for two felony convictions within five years of the filing of the termination petition. Therefore, under section 1(D)(i) of the Act, the State's evidence created a rebuttable presumption of depravity. 750 ILCS 50/1(D)(i) (West 2016). During closing arguments, respondent's trial counsel recognized that the State established the presumption of depravity, but argued that respondent's actions during his incarceration rebutted the presumption: "the services [respondent] has done show a commitment to rehabilitation and to leading a lifestyle that the children would be able to be returned to his care." However, merely attending, or even completing, classes while in prison, while commendable, does not show rehabilitation or a lack of depravity. See *In re Shanna W.*, 343 Ill. App. 3d 1155 (2003); *In re A.M.*, 358 Ill. App. 3d 247 (2005); and *In re Addison R.*, 2013 IL App (2d) 121318.

¶ 18 Thus, we agree with appellate counsel's assertion that there is no issue of arguable merit with respect to the trial court's finding that respondent is an unfit parent pursuant to section 1(D)(i) of the Act. 750 ILCS 50/1(D)(i) (West 2016). When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, reviewing courts need not consider the additional grounds of unfitness found by the trial court. *In re Gwynne P.*, 215 Ill. 2d

340, 363 (2005). We therefore do not discuss the other two grounds of unfitness found by the court.

¶ 19 After the trial court finds a parent unfit, the issue becomes "whether, in light of the child's needs, parental rights *should* be terminated." (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). A respondent's interest in maintaining the parent-child relationship must yield to the minors' interest in a stable, loving home life. *Id.* Under the Juvenile Court Act of 1987, the trial court must consider ten different factors in determining the best interests of a child: (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 which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05)(a)-(j) (West 2016). No one factor is dispositive. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48. Additionally, the court may examine the nature and length of the minors' relationship with their present caretakers and the effect that a change in placement would have upon the minors' emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). As previously noted, a reviewing court will not reverse a trial court's termination judgment unless it is against the manifest weight of the evidence. *Id.*

¶ 20 In the brief's conclusion, counsel notes that "the adoption of these children by these adoptive parents is the best result for both the children and the father." Counsel points to

respondent's own testimony that he would like the children to be adopted by their current foster parents. During the best interests hearing, respondent testified that he was aware that he could not provide for the minors, stating "I'm not in a position to do anything for my kids. You know I don't have a place for them to go, I don't have a job, I don't have any money, I don't have anything -- anything that can help support them." He further testified that he knew R.C. wants to be adopted by his foster parents. When told that the other minors also expressed desire to be adopted by their foster family, respondent testified that he would prefer if all of the minors stayed with their current foster families, if his rights were terminated.

¶ 21 R.C.'s foster father testified that he and his wife have cared for R.C. for the entirety of the case and that R.C. has adapted well to their home. R.C. has gone on vacation with his extended foster family, participates in two different basketball leagues, and is doing well in school. L.C., L.C., and J.C.'s foster mother, who along with her husband have cared for the three minors for nearly the entirety of the case, testified that the children have all bonded with both her biological and adopted children and have gone on vacations with the family. Both foster parents testified that they routinely get all four siblings together for play dates and are open to continue not only facilitating the relationship between the siblings but also with the biological parents, if appropriate for the minors.

¶ 22 In finding, by a preponderance of the evidence, that it is within the minors' best interests to terminate respondent's rights, the trial court noted that it "had reviewed and considered the statutory best interests factors as they relate to these four children's ages and developmental stages," as well as "all of the testimony and documentary evidence that's been presented and *** the arguments of Counsel." The court highlighted that the children "are bonded to their foster

families" and was encouraged that the foster parents were "open" to allowing the biological parents to be involved in the minors' lives.

¶ 23 Based on our careful review of the record, we agree with counsel that the termination of respondent's parental rights is the "best result" for the minors, as there is no issue of arguable merit with respect to the trial court's findings. The trial court examined the facts before it, keeping in line with the statute's requirements. These facts include that each of the minors has lived continuously with their respective foster families for a number of years and bonded with them. 705 ILCS 405/1-3(4.05)(d)(i)-(iv) (West 2016). The record shows that all of the minors are doing well and are appropriately cared for, (705 ILCS 405/1-3(4.05)(a) (West 2016)) and the older children expressed a desire to be adopted by their foster families (705 ILCS 405/1-3(4.05)(e) (West 2016)). The record also shows that the foster parents have facilitated, and have pledged to continue to facilitate, the minors' relationship with each other. (705 ILCS 405/1-3(4.05)(g) (West 2016)). Finally, both foster parents are open to continuing respondent's involvement with the minors.

¶ 24 Accordingly, the trial court's finding that it was in the minors' best interests to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 After our own thorough review of the record, we hold that this appeal presents no issue of arguable merit. We remind counsel that "[p]arental rights and responsibilities are of deep human importance and are not terminated lightly." *S.M.*, 314 Ill. App. 3d at 685. That importance demands counsel to be a zealous advocate for his client, and if counsel submits any *Anders* briefs in the future, they should conform to the four steps outlined above. Despite the shortcomings in the brief submitted to the court, we nevertheless grant counsel's motion to withdraw and affirm

the judgment of the circuit court of Winnebago County finding respondent unfit and terminating his parental rights.

¶ 27 Affirmed.