2018 IL App (4th) 170743-U

NO. 4-17-0743

FILED
March 2, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re R.B., a Minor	)	
	)	Appeal from
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Macoupin County
v.	)	No. 11JA14
Patricia Bourland,	)	
Respondent-Appellant).	)	Honorable
	)	Joshua A. Meyer,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw is granted; the judgment terminating respondent's parental rights is affirmed as there are no issues of arguable merit regarding the trial court's findings of respondent's unfitness and the minor's best interests.

¶ 2 On September 14, 2017, the trial court found respondent mother, Patricia Bourland, an unfit parent to her daughter, R.B., and likewise found termination of respondent's parental rights would be in the minor's best interests. Respondent appealed the court's judgment terminating her parental rights.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See, *e.g.*, *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (this court held *Anders* applies to termination of parental rights cases and provided the proper procedure to be followed by appellate counsel). Counsel states he has read the record in this

case. In fact, counsel states he represented respondent through the termination proceedings. According to counsel, after his review, he has concluded this case presents no viable grounds for an appeal and any appeal would be "wholly frivolous." He supported his motion with a memorandum of law, containing potential issues and argument as to why the issues lack merit. Counsel served respondent with a copy of his motion and memorandum. On our own motion, this court granted respondent through December 8, 2017, to file additional points and authorities. Respondent filed none. After examining the record and executing our duties consistent with *Anders*, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On June 27, 2011, when R.B. (born December 6, 2008) was 2 1/2 years old, respondent left R.B. in the care of a minor while respondent was hospitalized for mental-health issues. The local police received a tip suggesting they search this minor's residence. There, the police found R.B. in the presence of a known sex offender. The Illinois Department of Children and Family Services (DCFS) took the child into protective custody and placed her in a traditional foster placement. (R.B.'s father died when she was five months old.)

¶ 6 On August 2, 2011, the trial court allowed R.B. to be returned to respondent's care and the case continued under supervision. R.B. remained with respondent until March 23, 2012, when she was returned to foster care because respondent refused to seek alternative living arrangements in spite of an infestation of bedbugs at respondent's home.

¶ 7 On April 27, 2012, the trial court entered (1) an order of adjudication, finding R.B. neglected, and (2) a dispositional order, finding respondent unable for reasons other than financial reasons alone to care for R.B. On May 16, 2012, R.B. was again returned to respondent where she remained until October 4, 2012. On that day, police were called to respondent's

apartment complex after receiving a complaint that respondent was intoxicated and yelling and cursing on the playground. After the police were able to calm respondent, they left but were called back after being notified that respondent had threatened to harm her neighbor and kill herself. DCFS placed R.B. back into foster care, where she remained for the remainder of the case.

¶ 8 In January 2013, respondent participated in a psychological evaluation performed by Dr. Judy Osgood. Dr. Osgood opined respondent suffered from mental disorders, including bipolar disorder not otherwise specified, posttraumatic stress disorder, parent-child relational problems, personality disorder not otherwise specified and alcohol dependence and cannabis abuse. Respondent admitted an "extensive history of psychiatric hospitalizations" but denied a need for psychotropic medication.

¶ 9 In June 2013, DCFS assigned the case to Camelot Care Centers, Inc. (Camelot). Respondent expressed her desire to cooperate with the agency with the hope of regaining custody of R.B. She admitted she was in a relationship and lived with her paramour, Gerald Lehnen, in a two-bedroom apartment in Springfield. She asked that visitation with R.B. be conducted at their residence, but this request was denied based upon Lehnen's criminal history. His history included a 1987 conviction for murder. He was released on mandatory supervised release in March 2012 and remained on supervised release at the time.

¶ 10 According to permanency reports in the record, R.B. had been diagnosed with reactive attachment disorder, organic brain disorder, and developmental disorder. She was involved in therapy and was progressing. R.B. was placed in her third foster placement in June 2014 with a family in Virden. R.B.'s previous foster families could not control her erratic and extreme behavior and asked for her removal.

¶ 11 In respondent's April 2014 case plan, the caseworkers recommended respondent participate in parenting classes, substance-abuse counseling, mental-health counseling, domestic-violence counseling, a psychiatric assessment including completion of all recommendations, and supervised visitation with R.B. Respondent was also required to cooperate with caseworkers and obtain suitable housing.

¶ 12 In June 2014, this case was transferred from Montgomery County to Macoupin County. According to respondent's case plan, the goal had been changed in Montgomery County to "substitute care pending court determination on termination of parental rights after three years of inconsistent improvements based on service plan requirements and passing legal screening in September 2013." Respondent was attending supervised visits. Lehnen was being incorporated into the visits as well, as he had been, at this time, successfully discharged from mandatory supervised release. However, according to the caseworker, respondent had "made little progress on her service plan during this reporting period."

¶ 13 In April 2015, Dr. Terry Killian performed a psychiatric evaluation and diagnosed respondent with a history of posttraumatic stress disorder, possible bipolar mood disorder, and a history of alcohol and marijuana abuse. Although he did not recommend terminating parental rights as an appropriate goal at that time, he believed respondent was not capable of parenting R.B. without supervision.

¶ 14 According to a June 2015 permanency hearing report, respondent still had not made significant progress on her case plan. She was required to participate in domestic-violence counseling, individual therapy, substance-abuse treatment, and visitation, while maintaining a safe residence and stable income. She had completed parenting classes but parenting remained a goal on her case plan because she was expected to show progress in parenting by demonstrating

the skills learned. According to the report, the caseworker explained to respondent that Lehnen's criminal history was a definite concern and would make reunification with R.B. more difficult. However, respondent "continued to make this relationship her choice."

¶ 15 In September 2015, respondent's visits with R.B. were moved into the home every Saturday for six hours. Respondent reportedly was now accepting responsibility for R.B. being in foster care. Respondent expressed her desire for R.B.'s return. However, by September 2016, respondent had not made significant progress. She was unsuccessfully discharged from domestic-violence counseling for missed appointments and she was not regularly attending her weekly individual therapy appointments. Although, she had completed substance-abuse treatment and parenting classes.

¶ 16 In September 2016, respondent filed a motion for restoration of custody, alleging she (1) had made "all necessary reasonable efforts and reasonable progress in this case," (2) had corrected the conditions which led to the child's removal, and (3) was fit, willing, and able to care for R.B.

¶ 17 Also in September 2016, respondent participated in a parenting capacity assessment with psychologist Dr. Jane Velez, who noted concerns about respondent's mental health. In Dr. Velez's opinion, respondent should be regularly taking psychotropic medications to stabilize her moods and mental-health symptoms. It was also her opinion that, although R.B. and respondent share a bond, R.B. would not benefit from returning to respondent's care "due to [respondent]'s instability and untreated bi[]polar disorder." Dr. Velez reported that Lehnen is an important stabilizing influence in respondent's life. But, the doctor noted, in July or August 2016, Lehnen reportedly had an affair. When respondent learned of the affair, she locked herself in her room, refused visitation with R.B., and refused to go to work. Dr. Velez and the

caseworker expressed concerns about the stability of respondent's mental health and living arrangements if her relationship with Lehnen ever deteriorated.

¶ 18 In an April 2017 permanency report, the caseworker reported respondent had refused counseling, visitation, and all contact with Camelot since January 2017. At a January 10, 2017, visit the caseworker discovered respondent's friend had moved into R.B.'s bedroom at the home. Respondent gave R.B. all of her belongings, including a photo album, to take to her foster home, stating respondent's house was never going to be her "forever home." Respondent refused future visits and informed the caseworker not to schedule anymore.

¶ 19 In May 2017, the State filed a petition to terminate respondent's parental rights to R.B., alleging respondent was an unfit parent due to her failure to (1) make reasonable progress toward the return of the minor during any nine-month period following adjudication, namely (a) August 5, 2016, through May 5, 2017, and (b) December 5, 2015, through August 4, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (2) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)). The State alleged termination of respondent's parental rights was in R.B.'s best interests.

¶ 20 On August 29, 2017, the trial court conducted a fitness hearing. The Camelot case manager, Belinda Walz; the Camelot case aid, Pamela Napier; and the Camelot clinical director, Dorothy Rhodes, all testified respondent had refused all telephone contact, visitation with R.B., visits from the caseworker, and any other contact from Camelot since January 2017. Walz also testified regarding the condition of respondent's home. She said respondent and Lehnen had a cat, two bearded dragons, and a python as pets. The apartment had a strong odor of cat urine, as it was apparent the cat relieved itself wherever it desired in the apartment. The cat and the large bearded dragon roamed freely throughout the apartment. The python was in an

aquarium in the living area. At the time of Walz's visit, there was a rat in a cage as well. R.B. explained to Walz, they would be feeding the rat to the python. Walz also noted the inappropriate posters on the wall, including those referencing the Insane Clown Posse musical group, which displayed scary, bloody, and gory images. Napier testified she supervised visits between respondent and R.B., and in her opinion, Lehnen acted more like the "parent" than respondent. Respondent acted more like R.B.'s peer. All witnesses confirmed respondent's last visit with R.B. was January 10, 2017.

¶ 21 Dr. Velez testified regarding her findings from the parenting capacity examination from September 2016. She noted respondent had a history of 26 mental-health hospitalizations and "a lot of suicidal gestures and attempts." In her opinion, respondent was incapable of adequately parenting R.B. Dr. Velez said she learned from her interview with R.B. that R.B. was very happy in her foster home, where she felt secure and loved.

¶ 22 Respondent testified on her own behalf, explaining she had stopped visitation because "it was too devastating to [her] to see [R.B.] leave not knowing if [she] would see her again." She considered Camelot to be "the problem" delaying R.B.'s return to her care.

¶ 23 After considering the evidence, the trial court stated with regard to respondent's efforts:

> "There was a six month period of no visits. Eight month period of no services and, under the circumstances that the mother was in, was it reasonable for her to be frustrated with Camelot or [DCFS] or the Court or her life situation? Yes. We have people come in here all the time that are frustrated with the system. They are frustrated with me. They are frustrated with the attorneys. They are frustrated with DCFS and Camelot. They are frustrated with a lot of things that are going

on in their life. And for me, to say well it is completely unreasonable for you to not be frustrated would just be wrong and completely lack any type of empathy for people in that situation. But, then you have got to look at, is it okay to say because you are frustrated to just not participate in treatment? To say no to everything that has been presented to you, to not making an effort. Making the appropriate effort is, despite those things, still making an effort to do your best to get there. But just to say 'I am not going to do them' is not reasonable and that is not a reasonable degree of interest. We have people that come in all the time that disagree with the Department and what they are doing and we have hearings and sometimes they still lose but sometimes they win and the reason why we have attorneys and we have due process and we have a judge that can hear things out is so there is no problem, it can be addressed that way, not by just saying ['] I'm done.['] Mr. Murphy, you said your client loves her child. And then I think you said she deeply cares for her. I agree one hundred percent with that. GAL Verticchio emphasized that. If we were here today to decide whether she loved and cared for her child, we would be done. She loves her. We are not here today to decide that. We are here to decide the statutory issues that are presented to the court through the petition. *** So with all that said, I am going to grant the State's petition on the two issues."

¶ 24 In September 2017, the caseworker prepared and filed a best-interest report, suggesting it would be in R.B.'s best interests to terminate respondent's parental rights. R.B., age seven, was diagnosed with attention deficit-hyperactivity disorder (ADHD) and asthma. She has been prescribed Ritalin and Clonidine for her ADHD and she takes both medications twice

daily. Her asthmatic incidents have decreased since visitation stopped and she takes medication only as needed. She has been with her current foster family, the Allens, since June 2014 and has bonded with the family, including two other minor children in the home. The Allens provide a "stable, structured environment that [R.B.] needs to be successful." Her behavior has improved dramatically and she no longer requires counseling. She is doing very well in school. The Allens are willing to provide R.B. with permanency by way of adoption and R.B. has expressed her desire to be adopted by them.

¶ 25 At the best interest hearing on September 14, 2017, case manager Walz testified R.B. refers to her foster parents as "mom and dad." According to Walz, R.B. wanted the Allens to adopt her. R.B. was well taken care of, doing well in school, showed drastic improvement in her behavior, and had all of her medical needs met. Waltz represented that R.B. told her foster dad in January 2017 that respondent told R.B. that she would never again live with respondent. R.B. asked Allen if his home could be her forever home. He said yes and they both wept. Since then, R.B. has not asked about respondent.

¶ 26 Lehnen and respondent both testified that R.B. had a "good relationship" with respondent. Lehnen noted R.B.'s "priceless smile" when she was with respondent. He said R.B. calls him "daddy" and they "instantly attached" when they met. Respondent described the love and bond she and R.B. share. Lehnen and respondent both testified that, in their opinion, Camelot caused the problems and prevented R.B. from returning to respondent's care. Respondent stated: "I am only human. I make mistakes. All I am asking is don't take away my only chance at being a parent. It is my only chance. My only daughter. I will never be, I can't have any more kids. Don't ruin our future."

¶ 27 After considering the evidence and the best-interest report, the trial court stated:

"The last visit was eight months ago. The recommendation of the GAL goes a long way with this court. The case has been bouncing around for approximately six years and I understand there [are] reasons why we all know the history of this case. I am not going to go over it again but nevertheless it is a lengthy period of time. There is no doubt that this child, like any child, needs permanency in her life in order for her to thrive. The child has thrived in the foster home, her home, social and school life have improved. Her behavior has improved. The testimony of Linda Walz was credible and compelling and she established a number of factors that the Court considered. I am—there is no doubt that I believe the mother when she says that she has had a tough life. We have a number of people that have tough lives that come through here and I sympathize with her for that. I think that she and [Lehnen] love this child. This isn't the case that we have some times where the parents aren't around period or have done horrific things to the child. I think that [respondent] and [Lehnen] do love this girl and that if her rights were terminated the mother would be, would suffer and that she would feel awful about it because she loves this child. At this point the court has to focus on the child though. It is not how it is going to affect the State or DCFS or mom or dad or aunts or uncles or anything, it is really the focus has to be on the child. And I understand that there is some animosity between maybe the State and the mother, or the mother and Camelot and the [c]ourt can't focus in on that either. Anything the court decides today certainly is not to punish anyone whether it is the child, the mother, [step-dad] anybody involved in this case. It has got to focus in on simply what is in the best interest of the child and based on the testimony and

evidence presented, the [c]ourt will find that it is in the best interest of the minor child that the parental rights be terminated."

The court entered a written order.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Fitness Finding

¶ 31 For purposes of evaluating whether there exists arguable merit to claims that respondent could raise on appeal regarding her fitness, we must bear in mind that any one ground, properly proved, is sufficient to affirm. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). Further, a trial court's unfitness finding will not be disturbed on review unless contrary to the manifest weight of the evidence, meaning unless the opposite conclusion is clearly evident or the finding is not based on the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); *Janine M.A.*, 342 Ill. App. 3d at 1049. As such, we agree there would be no arguable merit to a challenge to the court's finding of unfitness because, at a minimum, the court's finding respondent failed to make reasonable progress toward the return of R.B. during the nine-month period between August 5, 2016, and May 5, 2017, is not contrary to the manifest weight of the evidence.

¶ 32 The question of reasonable progress is an objective one, which requires the trial court to consider whether respondent's actions would support the court's decision to return the child home in the near future. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. In order for there to be reasonable progress, there must be some "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001).

¶ 33 Here, the evidence reflected and the trial court reasonably found that, during the majority of the relevant period (five of the nine months between August 5, 2016, and May 5, 2017), respondent's visits with R.B. ceased; her participation in any service ceased; her communication with caseworkers ceased; and clearly her desire to regain custody of R.B. ceased. She voluntarily absented herself from the case and from R.B.'s life. The first four months of the relevant time period were not much better. In August 2016, after learning Lehnen had been unfaithful, respondent locked herself in her room, refusing visits with R.B. and failing to go to work. The September 2016 parenting capacity examination revealed respondent was not properly addressing her mental-health issues and was incapable of adequately parenting R.B.

¶ 34 In light of the foregoing, the trial court's finding was not contrary to the manifest weight of the evidence. That is, the State met its burden of establishing that, between August 5, 2016, and May 5, 2017, respondent had made no reasonable progress toward the possibility that the court in the near future would be able to order R.B. returned to respondent. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068 (2004).

¶ 35 B. Best Interests

¶ 36 Similarly, we conclude there is no arguable merit to a claim it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in R.B.'s best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). A reviewing court will not disturb a trial court's best-interest determination unless it is against the manifest weight of the evidence. *S.M.*, 314 Ill. App. 3d at 687. In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)), including the child's physical safety and welfare, including food and health; need for permanence, stability and continuity; sense of attachments,

love, security, and familiarity; community ties, including school; and the uniqueness of every child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 37 In this case, the trial court heard evidence that R.B. was thriving in her foster home. She had been in this home for two years after experiencing life in other homes, including relative foster placement. Each of those placements had a difficult time with R.B.'s erratic behavior. In this home, the foster family reported no problems with her behavior. In fact, by all accounts, her behavior at home and school had dramatically improved. R.B. felt loved and secure in her home and asked that the Allen home be her "forever home." The Allens have expressed their desire to adopt R.B. to provide her the stability and permanency she requires and deserves. She has developed a strong bond with her foster parents and the other children in the home.

¶ 38 Given the foregoing, the trial court's finding that it is in R.B.'s best interests for respondent's parental rights to be terminated so that she can live with and be adopted by her foster parents is not contrary to the manifest weight of the evidence.

¶ 39 C. *Anders* Motion To Withdraw

¶ 40 In *S.M.*, this court set forth the proper procedures for appellate counsel's request to withdraw on the basis of an *Anders* motion in parental rights termination cases. See *S.M.*, 314 Ill. App. 3d at 685-86. First, we required counsel to set out any irregularities or potential errors in a brief that may arguably be meritorious in his client's judgment. *S.M.*, 314 Ill. App. 3d at 685. Second, we required counsel to sketch the argument in support of the issues that could be raised and explain why he believed they are frivolous *if* such issues are identified. *S.M.*, 314 Ill. App. 3d at 685. (In *In re Austin C.*, 353 Ill. App. 3d 942, 946 (2004), we clarified this statement by changing "if" in the above sentence to "as to any such issue identified," requiring counsel to

identify, argue, and explain the frivolity of all potential issues.) Third, we required counsel to conclude the case presented no viable grounds for appeal. *S.M.*, 314 Ill. App. 3d at 685. Fourth, we required counsel to include the transcripts of the fitness and best-interest hearings. *S.M.*, 314 Ill. App. 3d at 685.

¶ 41 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that this appeal presents no issues of arguable merit. Counsel's motion and memorandum sufficiently comply with the above procedures. We therefore grant counsel's motion to withdraw and affirm the judgment of the circuit court of Macoupin County.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the trial court's judgment.

¶ 44 Affirmed.