2019 IL App (2d) 181003-U
No. 2-18-1003
Order filed May 3, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re M.K.M. and M.D.M., Jr., Minors	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	No. 17-JA-60, 17-JA-61
	)	
	)	
(People of the State Of Illinois,	)	Honorable
Petitioner-Appellee, v. Marcus M.,	)	Christopher Morozin,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The order terminating respondent's parental rights is affirmed as the trial court's findings with respect to unfitness and the children's best interests were not against the manifest weight of the evidence. Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967) is allowed.

¶ 2 On October 16, 2018, the trial court found respondent, Marcus M., to be an unfit parent with respect to his sons, M.K.M. and M.D.M. The court concluded on November 6, 2018, that the termination of respondent's parental rights was in the minors' best interests. For the reasons set forth below, we affirm the trial court's findings.

¶ 3 I. BACKGROUND

¶ 4 On September 8, 2015, the trial court entered a temporary custody order granting the Department of Children and Family Services (DCFS) temporary custody of M.K.M. (born July 30, 2015) and M.D.M. (born September 26, 2013) with the right to place and consent to medical treatment. The probable cause finding was that there was a history of domestic violence between respondent, Mason M., and the minors' mother in their presence with respondent as victim.

¶ 5 On March 1, 2016, M.K.M. and M.D.M. were adjudicated neglected and subsequently made wards of the court on March 15, 2016. DCFS was appointed guardian of the minors with the right to place them with a responsible relative or in traditional foster care. Also on March 15, 2016, respondent was found unfit, unable or unwilling, for reasons other than financial circumstances alone, to care for, protect, train or discipline the minors.

¶ 6 On May 15, 2017, the State filed a petition to terminate respondent's parental rights as to both minors. The petition alleged that respondent is unfit for (1) failure to maintain a reasonable degree of interest, concern or responsiblitly as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failure to make reasonable efforts to correct the conditions which were the basis for the removal of the minors (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) failure to make reasonable progress towards the return of the minors after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 7 On September 13, 2018, the trial court commenced a trial on the State's petition to terminate respondent's parental rights. The trial court admitted People's Exhibits 1 through 7 without objection. Relevant here, People's Exhibits 5, 6, and 7 were DCFS service plans from March 17, 2016, September 15, 2016, and March 5, 2017, respectively.

¶ 8 Lacey Norton was called as the State's first witness. Norton testified that she had been employed by One Hope United as a foster care manager. At the time of the trial, she was

employed as a caseworker with Allendale Association for just over a week. She worked at One Hope United as M.D.M. and M.K.M.'s caseworker when the case opened in September 2015 and, with the exception of a period between April 2016 and February 2017, had been the minors' caseworker throughout the pendency of the proceedings. Norton created the initial service plan regarding respondent and the minors which covered the six months prior to March 17, 2016. Per that service plan, respondent was to acquire appropriate housing and income, participate in anger management services, domestic violence services, substance abuse services, and parenting services. Additionally, respondent was to undergo alcohol and drug testing. Norton rated respondent unsatisfactory regarding the services in the March 17, 2016, service plan. Respondent had been inconsistent with the requisite services and drug testing following referrals for all services from Norton.

¶ 9 Norton testified that she communicated with respondent via phone and text to explain the services he needed to complete. Respondent had not undergone a drug test in over two years prior to Norton's testimony. Negative drug screens were a prerequisite to respondent's visitation with the children. He had not visited his boys since March 2016. Respondent had not sent any cards, letters or gifts to either child since his last visit.

¶ 10 Respondent was given referrals to various agencies for his participation in required services but either failed to complete or failed to participate in all of them. Since the opening of the case, respondent had several incidents of domestic violence with the children's mother. Respondent had been arrested and incarcerated three times as a result of these incidents.

¶ 11 On cross-examination, Norton testified that she had not prepared the September 15, 2016, or March 5, 2017, service plans. Although she could not state exactly how many parenting classes respondent failed to attend, she noted that he had been inconsistent with the parenting

classes per the service plans. She noted that respondent had only participated in nine of twenty-four drug screens, the majority of which returned positive results for the presence of drugs. Norton also stated that respondent had reported to her that he was on medication for bipolar disorder, but had not provided verification of that.

¶ 12 Following Norton's testimony, all parties rested and counsel presented arguments regarding unfitness. On October 16, 2018, the trial court found that the State had proven by clear and convincing evidence that respondent was unfit pursuant to 750 ILCS 50/1(d) subsections (b), (m)(i), and (m)(ii). Concerning respondent's failure to maintain a reasonable degree of interest, concer, or responsibility as to the minors' welfare, the trial court found that:

> "[H]e has failed to participate in visitation with the minors. Since adjudication he has not participated in tasks and services as previously identified no cards, no gifts, no letters, no emotional bonding or relationship with the children. Therefore, as to subsection (b), the court finds the State has met its burden of proof by clear and convincing evidence as to [respondent] in that he has failed to maintain a reasonable degree of interest, concern and responsibility in the welfare of [M.D.M. and M.K.M.].

Concerning respondent's failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children from respondent, the trial court found that:

> "[T]he minors were brought into care due to parents' illegal drug use and abuse which created an injurious environment for the minor children. There was also concern about domestic violence between the parents. Since the minors were brought into care, [respondent has] not completed substance abuse treatment, [has] not completed domestic violence treatment, [has] missed numerous random drops, [has] tested positive for drugs. *** [T]he court finds that the State has met its burden of proof by clear and convincing

> evidence that [respondent] *** has not made reasonable efforts to correct the conditions that were the basis for the removal of the two minor children."

Concerning respondent's failure to make reasonable progress toward the return of the children within the nine-month period following the adjudication of neglect, the trial court found that:

> "The initial 9 month period was from March 2, 2016, to December 2, 2016. For this 9 month period, the court refers to my previous findings as to [respondent's] lack of progress in complying with the tasks and services, *** missing drug tests, testing positive for drugs, [respondent] not visiting the children, *** inconsistencies and communication with the case worker. As to this subsection, the court finds the State met its burden of proof by clear and convincing evidence that [respondent] *** has failed to make reasonable progress towards the return of the minors during the initial 9 month period."

¶ 13 The matter proceeded to the best interest phase on November 6, 2018. The trial court admitted People's Exhibits 8 and 9, the best interest reports prepared by Norton and CASA, without objection. Lacey Norton was then recalled by the State and testified that the children had been in two foster homes since the beginning of the case and had been in their current foster home since September 2015. Norton said that the current foster parents are willing to permanently adopt both children. Norton had visited the foster home over twenty times in the prior three years. The foster home is a four-bedroom, single-family suburban home where both children have their own bedroom. The foster family provides plenty of food, clothing, toys and activities for the boys. The interaction between the children and the foster parents was described as very happy, emotional, and loving by Norton. The boys refer to their foster parents as Mommy and Daddy and are very bonded to them. Norton testified that it was her opinion that respondent's parental rights be terminated and the children be made available for adoption. The

majority of the boys' childhood had been spent with their current foster parents and they had not seen respondent in over a year. Norton said that it would be detrimental to remove the children from their current foster home and that although they are African American and the foster parents are Caucasian, she did not have any concerns with that issue. The foster parents live in a diverse neighborhood and school district and they also attend foster parent support groups specializing in raising children of different backgrounds and ethnicities. Norton testified that she had not heard the children refer to respondent as Dad in two years and they could not identify respondent's first name when used in front of them.

¶ 14 The trial court found that it was in the best interests of the minor children to terminate respondent's parental rights. In so finding, the trial court stated that:

> "The court has considered the statutory factors of best interest, all those delineated. *** The court [has] considered the safety and welfare of the minors and the knowledge of knowing that these foster parents have been the primary caretakers for these children for quite some time and that they've provided the safety, security, welfare, love, care, nurturing, that they've developed an identity with this family. They refer to these foster parents now as Mommy and Daddy. The Court is aware of the cultural differences between the foster family and these two minor children, and it's quite clear that the foster family is aware of that and have gone out of their way to preserve some of the cultural ties and identity that these minors have in their choosing of a new community and school district. There certainly is a sense of attachment. There's certainly a sense of love and affection between the minors and the foster family, a familiarity. The court [has] considered the continuity that has been good with these kids, that they've been in the same placement for over three years, that this certainly is the least disruptive placement.

> *** I've considered the risks involved. *** [L]et me say this to Dad. [Respondent], you really haven't been an active father. You really haven't been involved in the children's lives. And I look more towards your actions than your attorney's words of your love and affection for the children. Your actions certainly speak volumes to this court ***."

Respondent timely appealed.

¶ 15 II. ANALYSIS

¶ 16 Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), appellate counsel has filed a motion for leave to withdraw. Counsel avers that he has reviewed the record in detail, but is unable to identify any non-frivolous issues on appeal which would warrant relief by this court. Counsel has submitted a memorandum suggesting potential issues on appeal which may warrant relief by this court. 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.

¶ 17 Appellate counsel's memorandum argues that the trial court did not err in finding respondent to an unfit parent or in terminating respondent's parental rights. Counsel discussed the evidence in the record and explained why he believed these issues lack merit. We will review both the unfitness finding and the order terminating respondent's parental rights.

¶ 18 A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of such right is a drastic measure. *In re B'Yata I.*, 2013 IL App 2d 130588 ¶ 28. Accordingly, the Juvenile Court Act of 1987 provides a two-stage process for involuntary termination of parental rights. 705 ILCS 405/2–29(2) (West 2018). Initially, the State must prove that the parent is unfit. 705 ILCS 405/2–29(2), (4) (West 2018); 750 ILCS

50/1(D) (West 2016); *In re B'Yata I.*, ¶ 28. If the court finds the parent unfit, the State must then show that termination of parental rights would serve the child's best interests. 705 ILCS 405/2–29(2) (West 2016); *In re B'Yata I.*, ¶ 28.

¶ 19 With respect to the first stage of the termination process, section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)) lists various grounds under which a parent may be found unfit. *In re 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 2018); *In re Antwan L.*, 368 Ill. App. 3d at 1123. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889–90 (2004). The decision of a trial court with respect to a determination of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 20 Counsel first argues that the State proved by clear and convincing evidence that respondent failed to maintain a reasonable degree of interest, concern or responsibility pursuant to 750 ILCS 50/1(D)(b). Specifically, counsel points out that respondent had failed to visit with the children since March 2016 and had not sent any letters, cards or gifts. Further, counsel avers that even though respondent was incarcerated during the case, preventing him from physically visiting, he was only locally incarcerated and still able to send cards or letters to his children.

¶ 21 Because the language used in this ground for unfitness 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. *In re B'Yata I.*, ¶ 31 (emphasis in orginal). When determining whether a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, it considers "the parent's efforts to visit and maintain contact with the child as well as other indicia, such as inquiries into the child's welfare. *Id*. Courts may also consider whether a parent completed necessary service plans in making such a determination. *Id*. The interest, concern, or responsibility "must be objectively reasonable," and courts must focus on the parent's efforts, not on his success. *Id*.

¶ 22 The trial court was presented with voluminous evidence of respondent's failure to maintain a reasonable degree of interest, concern, or responsibility for the children's welfare. The evidence presented shows that respondent's efforts to visit and maintain contact with the children or comply with the necessary service plans was so lacking to be almost nonexistent. Lacey Norton testified that respondent did not successfully complete any of the required services and was, at best, sporadic with participation in the services. He tested positive for drugs on multiple occasions throughout the pendency of the case. He did not bring toys, gifts, or send any cards to the children. There was evidence of ongoing domestic violence between respondent and the minors' mother throughout the pendency of the case, resulting in arrests and incarceration.

¶ 23 The evidence presented by the State regarding respondent's unfitness was clear, convincing, and unrebutted. The trial court's finding of respondent's unfitness pursuant to 750 ILCS 50/1(D)(b) was not against the manifest weight of the evidence.

¶ 24 Counsel's memorandum also argues that the State proved by clear and convincing evidence that respondent was unfit for failure to make reasonable efforts to correct the conditions which were the basis for the removal of the minors (750 ILCS 50/1(D)(m)(i)) and failure to make reasonable progress towards the return of the minors after the adjudication of neglect (750 ILCS

50/1(D)(m)(ii)). The evidence presented at the unfitness hearing and articulated above was sufficient to support the trial court's finding of respondent's unfitness as to both allegations. The State need only prove one statutory factor of unfitness to effectuate the termination of parental rights. *In re A.S.B.*, 393 Ill. App. 3d 836, 843 (1997). A reviewing court need not consider other findings of unfitness when there is sufficient evidence to satisfy any one statutory ground. *Id*. Therefore, as the trial court's finding of respondent's unfitness pursuant to 750 ILCS 50/1(D)(b) was not against the manifest weight of the evidence, we need not reach the remaining arguments in counsel's memorandum.

¶ 25 Finally, counsel's memorandum argues that the trial court did not err in finding it in the children's best interest to terminate respondent's parental rights. He argues that the minors appear to be in a safe and loving home and are doing well. Counsel points to the trial court's adherence to each of the requisite statutory factors to be considered in reaching its best interest finding. Additionally, counsel notes that the trial court found that respondent had not really been in involved in the children's lives in any way since his last visit in March 2016.

¶ 26 Once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interests. *In re B'Yata I.*, ¶ 41. Section 1–3(4.05) of the Adoption Act (705 ILCS 405/1–3(4.05) (West 2018)) sets forth various factors for the trial court to consider in assessing a child's best interests. *In re B'Yata I.*, ¶ 41. The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *Id*. A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id*.

¶ 27 We conclude that the trial court's findings on the children's best interest were not against the manifest weight of the evidence. Lacey Norton's testimony at the best interest hearing went into great detail describing the children's life in their foster home. See *supra* ¶ 13. The CASA best interest report admitted in the trial court mirrors Norton's testimony. The children's foster parents were eager to adopt the boys, and the report recommended that they be permitted to do so. The evidence presented to the trial court shows that the children are fully integrated into their foster home and are thriving. Given all of the foregoing evidence, we cannot say that a conclusion opposite to the one reached by the trial court is clearly apparent.

¶ 28 Accordingly, we conclude that the trial court's finding that it was in M.K.M. and M.D.M.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the circuit court of Lake County and grant appellate counsel's motion to withdraw..

¶ 31 Affirmed.