2019 IL App (2d) 190135-U
No. 2-19-0135
Order filed May 16, 2019

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. Lawonda H., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

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

ORDER

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

¶ 2 Respondent, Lawonda H., appeals the trial court's rulings that (1) she was an unfit person under section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2016)) and (2) the termination of her parental rights was in the best interests of her minor children, J.C., L.C., L.C., and R.C. (collectively, children). 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 August 2015, the Department of Children and Family Services (DCFS) received a phone call reporting that J.C., L.C., L.C., and R.C., then aged one, two, three, and seven, respectively, were left unattended for at least 30 minutes in a "filthy dirty" home with no food. The caller also reported that respondent frequently smoked marijuana and drank "a lot" of alcohol while parenting the children and that she and the children's father[1] have a long history of domestic violence. DCFS's investigation indicated that there was both environmental neglect and inadequate supervision and opened an intact family case. Respondent was required to either clean the home or procure adequate housing, remain drug and alcohol free, and engage in domestic violence services. Due to the condition of the home, which had sewer water backed up into the bathtub, the children were removed from respondent's care, and safety plans were put in place for each child.

¶ 5 In November 2015 the State filed a neglect petition alleging that each child was neglected due to an injurious environment for three reasons: (1) respondent's substance abuse, (2) respondent's history of engaging in domestic violence, and (3) the home's unsanitary and inadequate living conditions.

¶ 6 On December 3, 2015, the trial court held a temporary shelter care hearing. The court found that there was probable cause that the children were neglected and that there was an urgent and immediate necessity to remove the minors from respondent's care. In so ruling, the court noted the lack of food in the home, the condition of the home, the domestic violence between

[1] The children's father is not a part of this appeal.

respondent and the children's father, and respondent's three positive drug drops since August 2015. The court ordered temporary guardianship and custody of the children to be placed with DCFS.

¶ 7 The children were adjudicated neglected on March 9, 2016. Respondent stipulated that the children were neglected pursuant to count two, her engaging in domestic violence with the children's father. The State agreed to drop the first and third counts, for respondent's substance abuse and the home's unclean conditions, respectively. On April 4, 2016, respondent agreed to a disposition declaring her to be unfit, unable, or unwilling to parent and placed guardianship and custody of the children with DCFS.

¶ 8 Over the course of the next two years, the trial court held five permanency hearings. During the first three permanency hearings, the State asserted and the trial court found respondent to have made reasonable efforts and progress toward the return of the children to her care. During that time, respondent was allowed one hour of unsupervised visitation each week. After the third permanency hearing in June 2017, the court changed the permanency goal to five months and set the next permanency hearing for three months to determine the appropriateness of overnight visitation and to potentially give guardianship and custody rights back to respondent.

¶ 9 However, during the fourth permanency review on September 12, 2017, the State asserted that no reasonable efforts or progress was made. The State indicated that respondent had tested positive for marijuana in June and missed a drug drop in August, stopped attending counseling sessions, received a warning letter that she would lose her housing subsidy due to her missing counseling appointments, and, most importantly, lied to the caseworker about the identity of her paramour, who was on parole following a prison sentence for domestic violence.

Given the drastic change in circumstances, the State argued that the goal be changed to return home in twelve months. Although respondent's counsel requested that the trial court postpone any findings on progress, the trial court agreed with the State. The court found that respondent had not made reasonable efforts or progress and changed the permanency goal to return home in twelve months.

¶ 10 In the final permanency hearing on April 2, 2018, the trial court found that respondent had not made reasonable efforts or progress. The court further determined that the permanency goal for the children would change to substitute care pending court determination of parental rights.

¶ 11 On May 9, 2018, the State filed a motion to terminate respondent's parental rights. The State alleged that respondent was an unfit person under section 1(D) of the Act for four counts: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failure to make reasonable efforts to correct the conditions that caused the removal of the children to her (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) failure to make reasonable progress toward the return of the children to her (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) failure to protect the children from conditions in their environment which are injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)). The State alleged two nine-month periods relating to these counts: June 12, 2017 through March 12, 2018, and from July 9, 2017 through April 9, 2018.

¶ 12 The hearing on the State's motion began on July 5, 2018. Despite receiving notice and speaking with her counsel regarding the hearing, respondent failed to attend. The State began its case in chief by eliciting testimony from the children's father. He testified that he had been incarcerated since 2015 for an aggravated domestic battery committed against respondent. He

also testified that he had two other convictions of domestic battery against respondent on his record. The State then introduced into evidence the indicated packet detailing the reason the children came into DCFS's care in 2015 and certified records of the father's convictions of domestic battery against respondent.

¶ 13 Next, the State called the family's caseworker, who established the foundation to introduce the initial integrated assessment and four family service plans dating from January 4, 2016, through December 7, 2017 into evidence. The family service plans contained the recommendations that respondent complete parenting classes, domestic violence services, individual counseling, and a substance abuse assessment, as well as participate in random drug screens. The caseworker testified that soon after August 2016 respondent finished both parenting classes and the domestic violence services.

¶ 14 The caseworker further testified that respondent was initially "defiant" in completing a substance abuse assessment. When she finally did so in December 2016, she was not referred to complete drug counseling, but was still required to participate in random drug screenings. Although she completed most of the drug screenings throughout the pendency of the case, she missed four drops, including twice during the alleged nine-month period, and tested positive for marijuana on six occasions: August 25, 2015; October 7, 2015; November 20, 2015; June 27, 2017; November 28, 2017; and January 23, 2018. She was re-referred for a substance abuse assessment after the June 27 positive test, which she had yet to complete.

¶ 15 The caseworker then testified that respondent was re-referred to domestic violence counseling in 2017 after the caseworker learned that she had a paramour, nicknamed "Yo-yo," who was on parole for domestic violence. The caseworker testified that respondent provided a false name and birth date for the paramour, and that, based on that false information, the

paramour was approved to be at visits with the children. The caseworker noted that respondent denied being in a relationship with the paramour, but that the children had identified him as respondent's "boyfriend." Further, the children reported to the caseworker that respondent smashed her television with a baseball bat because she was "angry at her boyfriend" during one of the unsupervised visits. Respondent had yet to complete the second recommended domestic violence services.

¶ 16 Finally, the caseworker testified that respondent had lost her housing subsidy through Rosecrance in September 2017, which helped her pay for the three-bedroom home, because she failed to comply with the subsidy's requirements. Respondent was to meet with a Rosecrance worker for monthly home inspections and attend both individual and group therapy. She had not been in contact with Rosecrance for months and stopped attending counseling all together. Further, the caseworker deemed the house unfit for continued visitation with the children because respondent failed to clean it properly, which led to mold growth. Respondent's visits with the children subsequently were moved to the agency's building.

¶ 17 On cross-examination, respondent's counsel questioned the caseworker regarding respondent's progress from August 2016 through May 2017. The caseworker testified that during that time respondent had completed several services, was in remission according to the substance abuse assessment, and had achieved unsupervised visitation with the children.

¶ 18 The hearing continued on August 2. This time respondent was present. After asking the court to take judicial notice of the temporary custody order, adjudication order, and the permanency review orders, the State rested.

¶ 19 Respondent's counsel then called respondent as a witness. Respondent testified that she believed that she completed the services required of her to regain custody of the children. She

testified that she attended counseling regularly, completed two domestic violence classes and a parenting class, maintained housing for all but "two months" during the proceedings, and went to "every" visit with her children. She further testified that she voluntarily moved out of the three-bedroom home to a one-bedroom apartment because the landlord failed to maintain the home properly, which led to the mold growth.

¶ 20 On cross-examination, respondent admitted that when she was initially given unsupervised visitation with her children, she violated safety rules by not placing her children in car seats when taking them to get ice cream. She further testified that Yo-yo attended some visits and was not her paramour, but rather her "best friend." Respondent stated that she did not know his real name until after the caseworker confronted her about his criminal history. Respondent also admitted that after she learned of Yo-yo's history, she maintained a relationship with him. He once waited outside of the agency's office for her when she was visiting with the children and spoke to the children upon the conclusion of the visit. Finally, respondent admitted that she had "smoked some weed" in January 2018, but denied smoking marijuana previously, stating that she must have gotten a "contact high" from people around her smoking marijuana.

¶ 21 In closing, the State argued that respondent did not maintain a reasonable degree of interest, concern or responsibility for her children's welfare by not maintaining safe and stable housing and her failure to complete the services required of her in the service plans. The State argued that, based on the totality of her actions during the nine-month time periods alleged, respondent had not made reasonable efforts or progress toward the return of her children. In so arguing, the State identified respondent's "failure to abide with the rules of visitation," "using marijuana," "exposing [the children] to a person with a history of domestic violence," "losing her housing" and the agency removing the visitation from her home "because of the state of the

house." Finally, the State argued that respondent failed to correct the conditions that led to the removal of her children because she continued to smoke marijuana, engaged in a relationship with a person who had a history of domestic violence, and failed to maintain adequate housing.

¶ 22 Respondent's counsel stressed that during the first three permanency hearings, the court found that respondent had made both reasonable efforts and progress. Counsel noted that although respondent "has not been perfect," she had been engaged in services throughout the pendency of the case and has been willing to work to get her children back. Counsel argued that respondent's use of marijuana and her lack of car seats were nominal violations and that it was unrealistic to request a friend's full name and to complete background checks on them. Finally, counsel noted that there were many old homes with issues, including mold, which do not "happen[] overnight," and respondent appropriately addressed that issue by moving out and securing new, albeit smaller, housing.

¶ 23 On August 24, 2018, the trial court found respondent unfit on two counts: failing to make reasonable progress toward the return of the children to her (750 ILCS 50/1(D)(m)(ii) (West 2016)) and failing to protect the children from conditions in their environment which are injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)). In regards to the lack of reasonable progress, the court stated, "at the beginning of the case the mother was found to have made reasonable progress; however, as the case progressed that changed." The court then noted that respondent's "visits went from supervised to unsupervised and then back to supervised *** and never changed again. There were never any steps that could be taken to place the minors back with the mother." The court also noted that the mother's paramour "had had some charges for domestic violence in his past" which caused concern.

¶ 24 The trial court then identified three problems that caused it to render its decision in favor of the State for injurious environment. First, respondent admitted to smoking marijuana daily when the case began, and she "never completely stopped during the course of the case." Second, the case began with a history of domestic violence between respondent and the children's father, and respondent "eventually ha[d] a paramour who also had that same history." Finally, the court noted that respondent and the children were living in a condemned home at the beginning of the case, and "[i]n 2017 the mother was evicted from her home. And the proper cleaning of the home always seemed to be a problem." The court concluded that it did "not believe that that the environment injurious ever was completely rectified."

¶ 25 The trial court then conducted a hearing on the best interests of the minors. Respondent did not testify. The State called the caseworker who testified that the children need permanency and have been in foster care since 2015. The caseworker stated that since 2015 the foster parents have been responsible for meeting the children's needs, each child has bonded with their foster family, and both of the older children expressed a desire to be adopted by their foster families.

¶ 26 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, has participated in two different basketball leagues, and was 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.

¶ 27 The trial court found that it was in the children's best interests to terminate respondent parental rights. In so finding, the 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 respondent to be involved in the children's lives. Accordingly, the court entered an order terminating respondent's parental rights and granted DCFS the power to consent to adoption.

¶ 28 On August 27, 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. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that she had 30 days to respond. That time has now passed, and she has not responded. We review counsel's request below.

¶ 29 II. ANALYSIS

¶ 30 Before turning to the merits of appellate counsel's motion, we address the timeliness of our decision. This case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. July 1, 2018) because it involves a matter affecting the best interests of children. Rule 311(a)(5) provides, in relevant part, that "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Here, the notice of appeal was filed on August 27, 2018 in the circuit court, and the 150-day deadline to issue our disposition was January 24, 2019. However, due to unknown technical reasons, the appellate clerk's office did not receive the notice of appeal from the circuit court until February 21, 2019.

Because the 150-day period expired before the appellate clerk's office even received the notice of appeal, we find good cause for issuing our decision after the 150-day deadline.

¶ 31 We now turn to the merits of appellate counsel's *Anders* motion. Although counsel's brief does an adequate job reciting the procedural history of the case as well as a review of the bifurcated process of terminating a parent's rights, it lacks a sufficient analysis of the case at hand. Instead, counsel notes—in a one-page argument—that "respondent could argue" two cases against her unfitness, but does not explain how such arguments would fail. In regards to the children's best interest, counsel simply states —in four sentences—that "there is no meritorious argument to be made" on respondent's behalf. We remind counsel that an *Anders* brief must follow a prescribed four-step formula: the brief must (1) refer to *anything* in the record that might arguably support the appeal; (2) sketch the argument in support of the issues that could conceivably be raised on appeal and explain why those arguments are frivolous; (3) conclude that no viable grounds exist for the appeal; and (4) have attached to it transcripts of the relevant hearings. See *In re J.P.*, 2016 IL App (1st) 161518, ¶ 6.

¶ 32 We stress to counsel that a parent's rights to raise her children are fundamental and terminating those rights is an extraordinary measure that should not be taken lightly. *In re Cornica J.*, 351 Ill. App. 3d 557, 565-66 (2004). We further remind counsel that a reviewing court is entitled to have a cohesive legal argument presented to it. *In re Marriage of James and Wynkoop*, 2018 IL App (2d) 170627, ¶ 37. Despite the brief's lack of a cohesive argument, our own thorough review of the record shows that there are no issues of arguable merit to be raised on respondent's behalf. Because we do not want this case to languish any longer as it involves the best interests of four children and has already been delayed over 150 days, we grant counsel's motion to withdraw and affirm the rulings of the circuit court of Winnebago County.

¶ 33 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. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16. Under section 1(D)(m)(ii) of the Act, a parent is unfit where she fails to make reasonable progress toward the return of her children to her during any nine-month period, as identified by the State, following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2016). The court may only consider evidence of the parent's conduct during the relevant nine-month period identified by the State. *In re R.L.*, 352 Ill. App. 3d 985, 999 (2004). Reasonable progress toward the return of a child is judged on an objective standard that focuses on the steps that a parent has taken toward reunification. *In re H.S.*, 2016 IL App (1st) 161589, ¶ 27. The benchmark for measuring a parent's progress toward the return of the child encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). At a minimum, a parent must make demonstrable movement toward the goal of returning the child home. *In re H.S.*, 2016 IL App (1st) 161589, ¶ 27. A trial court's findings of unfitness will not be disturbed on review unless they are contrary to the manifest weight of the evidence. *Id.* at ¶ 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. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 34 Here, the principal conditions that led to the children's removal involved respondent's drug use, her engagement in domestic violence, and the home's deplorable conditions. To address these issues, the service plans recommended various tasks for respondent, including

completing a substance abuse assessment, participating in domestic violence classes and individual counseling, and maintaining safe housing. At the unfitness hearing, the State introduced evidence establishing that during the nine-month periods alleged, respondent tested positive for marijuana three times and missed two drug drops. Respondent admitted smoking marijuana on at least one occasion and did not fulfill her obligation to complete a second substance abuse assessment.

¶ 35 Further, the State introduced evidence that respondent introduced a paramour to her children who had a history of domestic violence. She gave the caseworker a false name and birth date of her paramour and, with that false information, he was approved to attend visits with her children. Even after respondent knew of her paramour's history, he showed up to visits with her children, and spoke to them after the completion of the visit. Due to this behavior, respondent was required to complete a second domestic violence course, which the caseworker identified she had not completed.

¶ 36 Finally, respondent was required to maintain adequate housing. The State introduced evidence demonstrating that respondent was evicted from a three-bedroom home for failure to comply with the subsidy requirements. Respondent admitted that she was without housing for two months. Additionally, visits were removed from the home because of unsafe conditions, namely that respondent had let mold acquire in the home.

¶ 37 In sum, the record does not establish that respondent complied with the terms of the service plan such that her children could be returned to her care. Indeed, the evidence presented to the trial court demonstrates that respondent did not address the reasons the children were removed in the first place. Tellingly, respondent continued to use marijuana, did not complete the second domestic violence class, continued to engage in a relationship with an individual who

committed domestic violence, and had visits moved back to the agency due to the condition of her home. In light of the foregoing, the court's finding that the State met its burden of establishing no reasonable progress was made to returning the children home during the nine-month periods identified in the motions to terminate respondent's parental rights was not against the manifest weight of the evidence. 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. See *In re Gwynne P.*, 215 Ill. 2d 340, 363 (2005). We therefore do not discuss the other ground of unfitness found by the court.

¶ 38 If the trial court finds the parent 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 children's best interest. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80. The issue for the trial court becomes "whether, in light of the child's needs, parental rights *should* be terminated." *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, including the child's sense of attachments, the child's wishes and long-term goals, the child's need for permanence, and 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 children's relationship with their present caretakers and the effect that a change in placement would have upon the children's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). A reviewing court will not reverse a trial court's termination judgment unless it is against the manifest weight of the evidence. *Id.*

¶ 39 Based on our careful review of the record, we agree with the trial court's findings that it is in the children's best interest that respondent's parental rights be terminated. The trial court examined the facts before it, keeping in line with the statute's requirements. These facts include that each of the children 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 children 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 children's 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, if appropriate for the children. Accordingly, the trial court's finding that it was in the children's best interests to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 After our own thorough review of the record, we hold that this appeal presents no issue of arguable merit and affirm the judgment of the circuit court of Winnebago County finding respondent unfit and terminating her parental rights.

¶ 42 Affirmed.