2019 IL App (2d) 190325-U
No. 2-19-0325
Order filed August 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.S., A.S., A.W., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 16-JA-371 16-JA-372 16-JA-373
(The People of the State of Illinois, Petitioner-Appellee v. Louis W., Respondent-Appellant).	)	Honorable Mary Linn Green Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

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

¶ 2 On April 19, 2019, the trial court found that the State had established by clear and convincing evidence that respondent, Louis W., is an unfit parent to his children, J.S., A.S., and A.W., under three sections of the Adoption Act (see 750 ILCS 50/1(D)(b), (D)(m)(i), (D)(m)(ii) (West 2016)), and that it is in the children's best interests that his parental rights be terminated. Respondent appeals.

¶ 3 Respondent's appellate attorney moves to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967); see *In re Alexa J.*, 345 Ill. App. 3d 985 (2003) (*Anders* applies to termination cases). Counsel states that he thoroughly reviewed the record, is familiar with the case, researched the applicable statutes and case law, and concluded that there are no meritorious issues of procedure or substance to be raised on appeal that would warrant relief by this court. Counsel supports his motion with a memorandum of law providing a thorough statement of facts and an argument as to why this appeal presents no issues of arguable merit. Counsel further states that he served respondent with a copy of the motion by regular and certified mail at his last known address and informed him of the opportunity to present any additional matters to the court within 30 days. We advised respondent that he had 30 days to respond to the motion. The time is past, and respondent did not respond.

¶ 4 For the reasons set forth in counsel's memorandum of law, we agree that it would be frivolous to argue either that it was against the manifest weight of the evidence for the trial court to find respondent unfit or that termination of his parental rights is not in the children's best interests.

¶ 5 I. BACKGROUND

¶ 6 Respondent is a resident of Champaign County and so was the mother, Aquelle S. There was a pending juvenile case in that county when these cases began. The circuit court of Champaign County entered an order in 2014 terminating respondent's parental rights as to A.S. and A.W. He appealed, and the Fourth District Appellate Court affirmed the finding of unfitness, but it reversed in part and remanded, on the basis that the State failed to establish that the termination of respondent's parental rights was in the best interests of the children. The court remanded the case "so the supervised visitation that existed prior to the termination of

respondent's parental rights may be reinstated and such visitation resumed." *In re A.W. and A.S.*, 2014 IL App (4th) 140544-U, ¶ 45. The evidence presented in this case concerning unfitness pertained to the time periods after the original finding of unfitness in the Fourth District case.

¶ 7 Aquelle moved to Winnebago County with her six children and the three cases involved in this appeal, which included A.S., A.W., and J.S., commenced there. J.S. had not been included in the Champaign County case because respondent did not believe that he was the child's father, although he was later determined to be.

¶ 8 Amended neglect petitions were filed on November 2, 2016, in which the State alleged the minors were neglected pursuant to sections 2-3(1)(a), 2-3(1)(b), and 2-3(1)(d) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(a), (b), (d) (West 2016)). Subsequently, an order of adjudication was entered on January 17, 2017, finding the minors neglected. Respondent did not object to the entry of the order. Temporary guardianship and custody was placed with DCFS with the discretion to place the minors with a responsible relative or in traditional foster care. On October 17, 2018, the court accepted Aquelle's final and irrevocable consent to adoption.

¶ 9 On February 8, 2019, the State filed a three-count amended motion to terminate respondent's parental rights as to the minors pursuant to sections 50/1(D)(b), (m)(i), and (m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (m)(i) (m)(ii) (West 2016)). The applicable nine-month periods in counts 2 and 3 ranged from 1/17/17 to 10/17/17, and/or 10/17/17 to 7/17/18, and/or 1/17/18 to 10/17/18.

¶ 10 A. Unfitness Hearing

¶ 11 Lacey Gray, a case worker with Youth Services Bureau, testified that she observed supervised visits between respondent and the minors. There was one incident when respondent lunged at an aide and yelled at her in front of the children. A few times respondent made off-

hand comments about two of the children not being his because they had different last names than his. Gray and her supervisor had conversations with respondent, but his behavior did not improve. Her supervisor decided to stop all visits until respondent enrolled in counseling services. He received multiple referrals, the first in 2017. Gray followed up with the referral but each time was informed that respondent had not returned their calls or had not come in for an appointment. Respondent never changed his behavior and visitation never started up again.

¶ 12 The integrated assessment never occurred with respondent because he stated that he did not have an open DCFS case and therefore, did not need to do it. The agency recommended parenting services and anger management services. The referrals for those two issues were both to Cognition Works. Respondent did not engage in either service. Respondent was also asked to do drug drops, but he never made any. The only time Gray could speak with respondent occurred during court or during visits and the lack of communication made it hard for respondent to know what was happening with his children.

¶ 13 The visits with the children were suspended in April 2017, and respondent had not visited the children since then. After that date, there were no letters or gifts other than shoes that he bought for the children, which were the wrong sizes. He did not regularly inquire about their educational needs either.

¶ 14 As to the periods between January 17, 2017, to October 17, 2017, Gray was not able to move towards either unsupervised visits with respondent or placement of the minors with him because he constantly stated that he did not need to do services. The same held true for the periods from October 17, 2017, through July 17, 2018, and from January 18, 2018, through October 17, 2018.

¶ 15 Respondent testified and did not deny that he did not engage in services in this case.

¶ 16 The trial court found that the State had met its burden of proving by clear and convincing evidence that respondent was unfit on all three counts, noting that respondent did not complete any services that had been requested of him and that he continued to maintain that he did not need services because he had had them in the Champaign County case and he did not need them anymore. The court particularly found that respondent made no reasonable efforts or reasonable progress as to those dates falling within the time frames cited in counts 2 and 3.

¶ 17 B. Best Interests Hearing

¶ 18 Gray testified that she had been the minors' case worker since they came into care sometime in 2016. She explained that they were placed together in a foster home and have resided together there for over two years. The household consists of the three minors, another brother of theirs, the foster mom, and the foster mom's son.

¶ 19 J.S. has resided with the foster mom the longest and refers to her as his mom. They have a close relationship. His favorite time of the day is doing homework with her. The foster mom supports him playing sports, takes him to the doctor, and to school events.

¶ 20 J.S. attends a charter school and has an educational plan similar to an Individualized Educational Plan (IEP). He is behind in some areas of school, but the foster mom makes sure that he receives the special help that he needs. J.S. loves playing football. He is close to his siblings and attends counseling, which the foster mom insures that he attends. When asked about his wishes, he states that he wants to stay where he is and with his siblings.

¶ 21 A.W. also has a close relationship with the foster mom and wants to be adopted. She leans on her a lot. A.W. constantly asks Gray when she is going to be adopted. A.W. had had significant behavioral issues, which have lessened since counseling. She is in a self-contained classroom but is becoming more able to spend time in the regular education rooms.

¶ 22 A.S. has a close relationship with the foster mom too, and feels comfortable discussing issues with her which she otherwise might not with someone else. A.S. is in counseling for anger and aggression management.

¶ 23 Both A.W. and A.S. participate in dance and cheerleading. The children are all very involved in the Booker Washington Center and activities at church.

¶ 24 The foster mom is committed to providing permanency for the three children through adoption. Both the foster mom and her adult children are very excited about the possibility of being able to have them adopted into the family. The extended family and the minors refer to each other as brothers and sisters. The foster mom is willing to maintain a relationship between the minors and two other half-siblings.

¶ 25 The agency recommended that it was in their best interests that the minors be adopted.

¶ 26 After considering all the evidence, the witnesses' credibility, and the statuto/ry factors, the trial court found the State proved by a preponderance of the evidence that it was in the minors' best interests that respondent's parental rights be terminated.

¶ 27 II. ANALYSIS

¶ 28 In Illinois, the Act (705 ILCS 405/1 *et seq*. (West 2016)) provides a two-stage process for involuntary termination of parental rights. Initially, the court holds an "unfitness hearing," during which the State must make a threshold showing of parental unfitness as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2016). After the court finds the parent to be unfit, the court then conducts a "best interest hearing" to determine whether it is in the best interests of the child to sever the parental rights. 705 ILCS 405/2-29 (West 2016); *In re D.T.*, 212 Ill. 2d 347, 352-53 (2004).

¶ 29 A. Unfitness Determination

¶ 30 Section 50/1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) lists various grounds under which a parent may be found unfit. Because the termination of parental rights constitutes a complete severance of the parent-child relationship, proof of parental unfitness must be clear and convincing. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A reviewing court will not disturb a trial court's conclusion that a parent's unfitness has been established by clear and convincing evidence unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A trial court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 31 Here, the trial court found respondent unfit on all three grounds alleged in the State's petition to terminate parental rights. We, however, need not consider all of the grounds under which the trial court found respondent unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the court's finding. *In re C.E.*, 406 Ill. App. 3d 97, 107 (2010).

¶ 32 Section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act." Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211 (2001)). Reasonable progress has been further explained as follows:

> " '[T]he benchmark for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act 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.' " *Reiny S.*, 374 Ill. App. 3d at 1046 (quoting *C.N.*, 196 Ill. 2d at 216-17).

¶ 33 We have reviewed the record and, at a minimum, the court's finding that, in the nine-month period from January 17, 2017, to October 17, 2017, respondent failed to make reasonable progress toward the return of the minors, is not contrary to the manifest weight of the evidence. The evidence reflected that throughout this case, respondent insisted that he need not engage in any services requested by the Department of Children and Family Services (DCFS) or any contracting agency. Respondent was asked to do individual counseling including some anger management as well as parenting classes and he never did them. He was asked by voice mail and letter request to take drug drops and he never complied. Respondent did not communicate with or contact the case worker, and as of April 2018, visitation with the children was suspended until respondent engaged in counseling. He claimed that he only was involved in the case in Champaign County, not Winnebago County. He testified that he engaged in services in Champaign County whenever asked to do so. Respondent stated that he had post-appeal visitation in Champaign County, which ended when Aquelle relocated to Winnebago County. However, his repeated refusal to engage in any of the services recommended in his service plan since the Fourth District decision is clear evidence of respondent's failure to make reasonable progress to correct the conditions that were the basis for the minors' removal. As such, there is no arguable claim that it was unreasonable for the court to find that between January and October 2017, respondent made no reasonable progress.

¶ 34 B. Best Interests Determination

¶ 35 Similarly, we conclude that there is no arguable merit to a claim that it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the children's best interests. After a trial court finds a parent unfit, it must determine whether it is in the child's best interests to terminate parental rights pursuant to the Act (705 ILCS 405/1-3 (West 2016)). We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 36 In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2016)), including the child's physical safety and welfare; development of identity; background and ties; sense of attachments, love, security, and familiarity; wishes and long-term goals; community ties, including school; need for permanence, stability and continuity of relationships with parent figures, siblings, and other relatives; and the uniqueness of every family and child.

¶ 37 Here, the evidence shows that all of the children are secure and functioning well in the foster home where their needs are being met. The children have formed close relationships with their foster mom and they wish to be adopted. The children are all active in the Booker Washington Center in Rockford, are engaged in activities in the church the foster mother attends, and are adjusting and performing well in school. The foster mom's extended family treats the children as family members. The agency recommends the adoptions. The foster mom also is committed to providing permanency for the children through adoption. The foster mom has another brother of the minors living in the home, who she intends to adopt.

¶ 38 The court found that with very young children there is a need for permanency and stability. It commented that the children need to know where they are going to bed every night,

they need to know who is going to make breakfast for them, and who is going to pick them up from school. We agree with the trial court. Moreover, reunification with respondent within a reasonable period of time is unlikely when he continues to refuse to engage in services.

¶ 39 III. CONCLUSION

¶ 40 After carefully examining the record in this appeal, as well as the motion to withdraw and the accompanying memorandum of law, we agree with appellate counsel that there is no meritorious issue upon which this court could grant relief. Thus, we grant counsel's motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 41 Affirmed.