2019 IL App (2d) 190612-U
No. 2-19-0612
Order filed October 10, 2010

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re T.P. and N.P., Minors.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 16-JA-128
	)	16-JA-129
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Theotis P.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Bridges 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 it is in the minors' best interests for parental rights to be terminated.

¶ 2 On July 12, 2019, the trial court found that the State had established by clear and convincing evidence that respondent, Theotis P., is an unfit parent to his children, T.P. and N.P., and that it is in the children's best interests that respondent's parental rights be terminated. Respondent appeals.

¶ 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) (*Anders*

applies to termination cases). Counsel states that he has read the record and has found no issues of arguable merit. Further, counsel supports his motion with a memorandum of law providing a statement of facts, potential issues, and argument as to why those issues lack arguable merit. Counsel served respondent with a copy of the motion and memorandum, and we advised respondent that he had 30 days to respond. That time is past, and he has not responded. 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 respondent's parental rights is not in the children's best interests.

¶ 4 A trial court's unfitness and best-interest findings will not be disturbed on review unless contrary to the manifest weight of the evidence (*i.e.*, 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); *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049 (2003). Here, the trial court found respondent unfit under the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2016)) on all three bases alleged by the State, namely his: (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 progress toward the return of the children to his care during any nine-month period following the adjudication of neglect or abuse and, specifically, from April 20, 2017, to January 20, 2018, and November 8, 2017, to August 6, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (3) failure to protect the children from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)). For purposes of evaluating whether there exists arguable merit to claims respondent could raise on appeal, we must bear in mind that, even if we were to find persuasive some of respondent's potential arguments attacking the unfitness finding, *any one ground*, properly proved, is sufficient to affirm. *Janine M.A.*, 342

Ill. App. 3d at 1049. As such, we agree with counsel that there would be no arguable merit to a challenge to the court's finding of unfitness because, at a minimum, the court's finding that respondent failed to protect the children from conditions within their environment injurious to their welfare was not contrary to the manifest weight of the evidence.

¶ 5 Here, the State filed a neglect petition on April 11, 2016, alleging that the children's environment was injurious and placed them at risk of harm in that: (1) respondent and the children's mother, Tonesha, had a history of domestic violence occurring in the home where the children reside; (2) on March 15, 2016, respondent squeezed Tonesha's neck until she passed out; and (3) respondent stated multiple times that he wanted polices officers to shoot and kill him. See 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 6 At the shelter care hearing, the court took judicial notice of a statement of facts that summarized four instances of respondent's violent conduct, including an incident in February 2015, when Tonesha heard N.P. cry out that respondent was whipping her. Tonesha confronted respondent, and he punched her twice in the face. Tonesha was six-months pregnant with T.P. She called 911; N.P had a red mark on the shoulder where she was struck by a belt. In addition, after an incident in February 2016, N.P. reported to her grandmother that "daddy pushed mommy, mommy grabbed a knife, and stabbed daddy in the eye." In March 2016, respondent battered Tonesha over use of a debit card. He bit her and put her in a choke hold; she reported that she became unconscious. The children were home during the altercation. Tonesha went with the children to a domestic violence shelter. Tonesha obtained a plenary order of protection against respondent, and the children were listed as protected parties. Respondent was arrested for aggravated domestic battery, was later convicted, and was sentenced to a term of imprisonment. On July 28, 2016, the court adjudicated the minors neglected.

¶ 7 The court held five permanency review hearings between January 2017 and August 2018. It never found respondent to have made reasonable progress. On August 27, 2018, the State moved to terminate respondent's parental rights.

¶ 8 At the unfitness hearing, in addition to testimony, the court admitted into evidence police reports, indictments, and certificates of conviction, along with services plans and assessments pertaining to respondent. As previously mentioned, the court found respondent unfit on three grounds, including his failure to protect the children from conditions in their environment injurious to their welfare. In announcing its findings, the court noted the documents reflected a history of domestic violence between respondent and Tonesha, along with an incident in February 2015, where respondent hit N.P. with a belt. Specifically, as to his failure to protect the children, "there were numerous exhibits of various [—] of [respondent's] crimes tendered by the State as well as his Integrated Assessment clearly states this." As to the other counts, in sum, the court found that respondent had not made reasonable progress, never had unsupervised visits, and did not complete required services.

¶ 9 Given the foregoing evidence and findings, we agree with counsel that an argument challenging the court's unfitness finding lacks arguable merit. Again, we must defer to the trial court and affirm if any *one* ground was proven by sufficient evidence. In that regard, any argument challenging unfitness would fail, given the court's finding that respondent failed to protect the children from an injurious environment. The evidence reflects that respondent committed physical acts of domestic violence against T.P., as well as against Tonesha while the children were home. Specifically, he whipped T.P., battered Tonesha, and choked Tonesha until she passed out. Evidence that a respondent committed acts of domestic violence may support an unfitness finding under section 1(D)(g). See, *In re J.B.*, 2014 IL App (1st) 140773, ¶ 58.

Further, we note that any efforts that respondent may have taken subsequent to the removal of the children from his care are irrelevant to the section 1(D)(g) finding, as a parent may be found unfit under section 1(D)(g) of the Act for the same conduct that resulted in the initial removal of the child. See *In re C.W.*, 199 Ill. 2d 198, 218-19 (2002).

¶ 10 Given the foregoing, there would be no arguable merit to an argument that the court's finding—that respondent failed to protect the children from conditions in their environment that were injurious to their welfare—was not based on the evidence or that the opposite conclusion is clearly apparent. We must agree with counsel that the court's finding here under section 1(D)(g) would render fruitless a challenge to the unfitness finding.

¶ 11 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. See *In re Janira T.*, 368 Ill. App. 3d at 894. 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 (705 ILCS 405/1-103(4.05) (West 2014)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*.

¶ 12 Here, the trial court heard evidence that, since 2017, the two children have been placed together in a traditional foster care home. They are closely bonded with the foster mother and father and are involved with the foster parents' extended family members. The foster parents ensure that the children attend all medical appointments and that their educational needs are met. Neither child has an individualized education plan or behavioral disorder. T.P. does, however, have diagnoses including developmental delays, sensory integration, adjustment disorder, and

sleep disorder. For a period, when there was too much stimulation, she would engage in head banging and could act with aggression. N.P. showed signs of trauma and anxiety. Both children have improved since living with the foster parents.

¶ 13 The court also heard evidence that, in December 2018, in the foster home, T.P. was burned with hot water in the shower. Foster father took her to the hospital, where she stayed for around one month. T.P. was temporarily removed from the foster home pending investigation, but later returned, because the agency felt that the foster home is where she had progressed the most (in her temporary home, the head banging returned and was "out of control," and there were periods when she would cry for a long time), she asked to go home to the foster parents' house, and the physicians and agency all felt that the foster father had reacted to the situation appropriately and in a timely manner. The child's CASA representative also noted that the evidence reflected that the incident was an accident that could have happened in a "second," and that it was handled appropriately. T.P. has received care for her wounds and does not have significant scarring. Further, the issue that caused her to become burned was mitigated through a corrective action plan. Specifically, the foster parents live in a rental home, and the landlord was contacted after it was discovered that the water heater was one for a commercial building. The foster parents did not have any control over the water heater. The corrective action plan requires that the home's water heater have on it a control device with which children cannot tamper. Also, a temperature gauge was placed on the shower head, so that the water temperature cannot reach a certain high temperature. Finally, only supervised baths, no showers, are permitted.

¶ 14 Respondent testified at the best-interest hearing that he visited with his children a few days prior to the court hearing. Before that visit, his last supervised visitation occurred

approximately 18 months earlier. The children had not lived with him since March 2016, nor had his extended family visited with the children since 2016.

¶ 15 The court found, given all the evidence and considering the statutory best-interest factors, that the State had met its burden of establishing that it is in the children's best interests that respondent's parental rights be terminated. Given the foregoing, we agree with counsel that there would be no arguable merit to a challenge to that finding. The evidence established that the incident wherein T.P. was burned, while unfortunate, was handled with appropriate action, treatment, and corrective mitigation. The evidence reflected that she is bonded with her foster parents, wished to return to their care, her progress devolved when she was temporarily removed from their care, and that it remains in her best interest to continue residing with her sister in the foster placement. N.P. is strongly bonded to the foster parents. The evidence showed that the children had not resided with respondent in approximately three years. The court's finding that it is in the children's best interests for respondent's parental rights to be terminated is not contrary to the manifest weight of the evidence.

¶ 16 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that the appeal presents no issues of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 17 Affirmed.