2019 IL App (4th) 180776-U

NO. 4-18-0776

FILED
April 16, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re K.W. and M.L., Minors	)	Appeal from the
	)	McLean County
(The People of the State of Illinois,	)	Circuit Court
Petitioner-Appellee,	)	No. 17JA94
v.	)	
Jennifer M.,	)	Honorable
Respondent-Appellant).	)	J. Brian Goldrick,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: Appellate counsel's motion to withdraw is granted and the trial court's judgment terminating respondent's parental rights is affirmed as there are no meritorious issues for review.

¶ 2 In October 2018, the trial court terminated the parental rights of respondent, Jennifer M., as to her minor child, M.L. (born May 17, 2003). Respondent signed a final and irrevocable surrender of her parental rights to her minor child, K.W. (born October 11, 2017). Respondent appealed the termination of her parental rights with respect to M.L. Her appellate counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting no meritorious issues exist for appeal. The record demonstrates respondent was served with the motion. This court granted respondent through February 4, 2019, to file a response to that motion. Respondent did not file a response. After reviewing the record and executing our

duties consistent with *Anders*, we grant appellate counsel's motion and affirm the trial court's judgment.

I. BACKGROUND

¶ 3 Respondent and Justin L. are the parents of M.L. Respondent, and her paramour, Troy W., are the parents of newborn K.W. The record reflects that Justin L., Troy W., and K.W. were involved in the underlying proceedings but are not subjects of this appeal.

¶ 4 In October 2017, the State filed a petition for adjudication of wardship, alleging that K.W. was a neglected minor because she was born with meconium containing a controlled substance. 705 ILCS 405/2-3(1)(c) (West 2016). The State further alleged that M.L. and K.W. were neglected minors and their environment was injurious to their welfare because of (a) respondent's unresolved issues of domestic violence and/or anger management; (b) respondent's unresolved issues of substance abuse; (c) putative father [of K.W.], Troy W.'s, unresolved issues of domestic violence and/or anger management; (d) Troy W.'s unresolved issues of alcohol and/or substance abuse; (e) putative father Justin L.'s unresolved issues of domestic violence and/or anger management; and (f) Justin L.'s unresolved issues of substance abuse. 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 5 On December 12, 2017, the trial court entered an adjudicatory order finding the minors neglected. On January 24, 2018, a dispositional report with service plans for each parent was filed in the trial court. On January 31, 2018, the trial court entered a dispositional order adjudicating M.L. and K.W. dependent minors, making them wards of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 6 On August 28, 2018, the State filed a petition seeking a finding of unfitness and

termination of the parental rights of the three parents. With respect to respondent, the State alleged that she was unfit because she (a) failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors (750 ILCS 50/1(D)(b) (West 2016)); (b) deserted the minors for more than three months preceding the commencement of the adoption proceeding (750 ILCS 50/1(D)(c) (West 2016)); (c) failed to make reasonable efforts to correct the conditions that were the basis for removal within nine months (December 12, 2017, through September 12, 2018) after the adjudication of neglect, abuse, or dependency (750 ILCS 50/1(D)(m)(i) (West 2016)); and (d) failed to make reasonable progress toward the return of the minors within nine months (December 12, 2017, through September 12, 2018) after the adjudication of neglect, abuse, or dependency (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State further alleged that termination of parental rights was in the best interest of the children.

¶ 7 On October 11, 2018, respondent appeared in court and signed a final and irrevocable surrender of her parental rights to K.W.

¶ 8 That same day, the trial court conducted a fitness hearing. Respondent admitted she was unfit for failing to make reasonable progress toward the return of M.L. within the nine-month period from December 12, 2017, through September 12, 2018. The State agreed to dismiss the remaining allegations of unfitness. Upon inquiry by the trial court, respondent asserted that she understood the allegations and she denied that any promises were made to induce her admission. The State then set forth, and respondent stipulated to, the following factual basis:

> "We would also present the testimony of case worker Danielle Nichols who would testify that she has been the only case worker on this matter, she had it

from the beginning. She drafted a client service plan in November of 2017. It contained basically four requirements. One was visitation, one was domestic violence counseling and treatment, same thing with substance abuse and for [respondent] to cooperate with the agency and in services.

Ms. Nichols had the opportunity to evaluate that client service plan on April 2nd of 2018, and as to visitation, [domestic violence], substance abuse and cooperation, mom was found unsatisfactory on all of those. *** [W]ere [Nichols] to testify as to mom's progress as of [September 12, 2018], she would indicate that mother was unsatisfactory again on all four of those goals."

¶ 9 Based upon respondent's stipulation and the factual basis presented by the State, the trial court found respondent unfit for failing to make reasonable progress toward the return of M.L.

¶ 10 That same day, the trial court conducted a best-interest hearing. The State presented the testimony of Danielle Nichols, a caseworker from the Center for Youth and Family Solutions. According to Nichols, "[M.L.] would like for her mom's parental rights to be terminated" because "[M.L.] cannot depend on her mother." Nichols testified that "[M.L.] feels like she does not have a good relationship [with respondent] and that [respondent] will not progress." Nichols agreed that termination of respondent's parental rights would be in M.L.'s best interest. She explained that adoption was not the recommended goal because M.L. did not want Justin L.'s parental rights terminated.

¶ 11 Nichols further testified that M.L. was currently living with her maternal great-grandmother, Gloria B. They lived together in the past and continued to have a "positive"

relationship. Nichols stated that she "can see *** the love that they have for each other and *** [M.L.] appears comfortable in her placement." Nichols acknowledged that there was a period when things were "a little bit rocky" as M.L. became acclimated to her new living arrangement. She explained that, although M.L. continues to struggle academically, M.L. was having "difficulties" before she was in Gloria B.'s care. Nichols testified that "things have improved" for M.L. and Gloria B. was working with M.L.'s school to "keep her on track[.]" Nichols testified that M.L. could rely on her grandmother to be "consistent" and "stable[.]" And that was "something she's never really had with [respondent]."

¶ 12 Nichols testified that she received reports of visitations occurring between M.L. and respondent that were not permitted by the agency. Nichols explained, however, that Gloria B. was present for those visits, which occurred when respondent was "just popping up" at Gloria B.'s home "maybe three [times]" within the last "couple months." Nichols stated that she received reports that the unscheduled visits did not go well. Nichols further testified that she had allowed phone contact between M.L. and respondent. According to Nichols, M.L. had described the phone calls as "very short."

¶ 13 Nichols explained that initially in November 2017 respondent indicated that she was "willing to cooperate with services" and she was visiting her children at that time. However, during the course of this case, respondent's involvement in M.L.'s life became "sporadic" and "undependable." Nichols testified that respondent called from Chestnut Health Systems and said that she was receiving substance-abuse treatment, but Nichols later received a report that respondent was discharged a "few days after."

¶ 14 Nichols further testified that, "until today [October 11, 2018], [respondent] has

not been back in this court *** since January of 2018" and "it's fair to say that the only reason she's here [at the best-interest hearing] is because she was arrested[.]"

¶ 15 Respondent testified next. She stated that, when M.L. was two years old, Justin L. was granted custody of M.L. because respondent was incarcerated at the time. For a "long period" M.L. "lived with her dad." Respondent admitted that she had been incarcerated for seven years of M.L.'s life.

¶ 16 In December 2015, M.L. was placed in respondent's care for "almost two years" and M.L. "went from a failing student" to an "A" student on the honor roll. Respondent described her relationship with M.L. during that period as follows:

> "Our relationship went from almost nonexistent to *** very close. *** I was the one [who] received the phone calls when there were problems. I was the one [who] received the phone calls when there was joy. We cooked together, we cleaned together, [and we] did laundry together."

Respondent explained that she later relapsed, K.W. was born, and "just that fast [M.L.] was ripped away again."

¶ 17 When M.L. was first placed with Gloria B., respondent and M.L. "spoke daily" and respondent's phone calls with M.L. were "pretty regular" until respondent "started using again." Respondent testified that she was initially allowed to visit M.L. twice a week from October 2017 until January 2018. But respondent relapsed in January 2018 and "got clean" in June 2018 for a "short period" before relapsing again the next month. She explained that her "drug of choice" is cocaine and she last used heroin in 2006.

¶ 18 Between January 2018 and June 2018, respondent testified that she saw M.L.

"sporadically." She testified that she would "show up" at the house where M.L. was living and there were also "external visits that to this day grandma *** [and] DCFS [did] not know[] about ***." She noted one occasion in April or May 2018 when M.L. called and asked to be picked up from M.L.'s boyfriend's home. According to respondent, M.L. stated, "I need you to come get me because I don't want grandma to know that I'm being hit." M.L. spent the night with respondent and "fell asleep crying in [her] arms ***."

¶ 19 Respondent testified that the "last time" she "received a phone call from [her] daughter," M.L. was calling "to come see [her]" but she could not because respondent was in a hotel room "[with] people *** using drugs ***." "By the time [respondent] called [M.L.] back *** she was already busy ***."

¶ 20 Respondent testified that she was arrested on September 20, 2018, and the last time she used cocaine was September 19. When asked about her plan for sobriety, she stated that she intended to attend "meetings," complete "outpatient whatever," and she had "agreed to random drug [and] alcohol testing." She stated that this time it would be "different" because she would be living with a sober family member whereas in the past she "didn't have a sober place to live."

¶ 21 Respondent acknowledged that she has a "significant" substance-abuse problem. She stated "[M.L.] has been forced to grow up very quickly. *** I have to take ownership [for] *** my part in that." She further stated, "When I'm actively using, I don't believe that I'm the best for [M.L.] ***."

¶ 22 Upon questioning from the court, Gloria B. explained that she was willing to keep M.L. "[f]orever" and do "[w]hatever it takes" until M.L. graduated or returned to her parents.

¶ 23 M.L. stated that she "want[ed] to stay with [her] grandmother until [she] *** [could] go back with [her] dad or until [she] graduate[d] and move[d] out on [her] own." M.L. stated that she thought respondent's parental rights should be terminated because "[respondent] always says she's going to be sober *** and that never happens. So [she was] not going to keep going through it because [she had] already been through it for fifteen years."

¶ 24 Based on the evidence presented, the trial court found it was in M.L.'s best interest that respondent's parental rights be terminated.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, respondent's appellate counsel filed a motion to withdraw. Counsel has attached a brief in support of that motion. See *In re Austin C.*, 353 Ill. App. 3d 942, 945, 823 N.E.2d 981, 983–84 (2004) (citing *In re S.M.*, 314 Ill. App. 3d 682, 685–86, 732 N.E.2d 140, 143 (2000), and stating the proper *Anders* procedure in parental-termination cases.) The record shows service on respondent. She has not filed a response.

¶ 28 A. Fitness

¶ 29 Appellate counsel notes that respondent admitted she was unfit because she failed to make reasonable progress toward the return home of M.L. following the adjudication of neglect as alleged in the State's petition to terminate her parental rights. The State agreed to dismiss the remaining allegations of unfitness in the petition. In attempting to identify potential issues for review, counsel asserts that no colorable argument can be made that the trial court erred in finding respondent unfit. We agree.

¶ 30 Parental rights may be involuntarily terminated when the trial court finds that a

parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child's best interest. *In re J.L.*, 236 Ill. 2d 329, 337–38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 31 An unfit parent includes one who failed "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the [neglect] adjudication ***." 750 ILCS 50/1(D)(m)(ii) (West 2016). "[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 become 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, 752 N.E.2d 1030, 1050 (2001). This court has described reasonable progress as "an 'objective standard,' " which exists "when 'the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody.' " (Emphasis in original.) *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88, 19 N.E.3d 227 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)). "[A] continued addiction to drugs, a repeated failure to obtain treatment for an

addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under [section 1(D)](b)." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 32 Here, as stated, respondent appeared in court and admitted that she was unfit because she failed to maintain a reasonable degree of interest, concern, or responsibility as to M.L.'s welfare. Upon inquiry by the trial court, respondent stated that she understood the allegations, she acknowledged that she had not been forced or threatened, and she denied that any promises were made to induce her admission. Further, the State provided a factual basis that was supported by the record on appeal. It showed that respondent minimally attended and participated in the underlying proceedings, she failed to complete services, and consequently she failed to make reasonable progress within the nine month period between December 2, 2017, through September 12, 2018. Accordingly, we agree that no colorable argument can be made that the trial court's fitness finding was against the manifest weight of the evidence.

¶ 33 B. Best Interest

¶ 34 Counsel argues respondent can raise no meritorious issue for review with respect to the trial court's best-interest finding. Counsel identifies as a potential argument that M.L.'s father, Justin L., "made no more progress than [respondent] yet he still has [his] parental rights, therefore it was not in the child's best interest that he [was] spared termination" of his parental rights.

¶ 35 "Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *In re D. T.*, 212 Ill. 2d 347,

364, 818 N.E.2d 1214, 1227 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* At this stage of the proceedings, "the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id.* "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 36 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child's age and developmental needs, include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 37 Initially, we note that the issue regarding the progress of Justin L., while relevant as to his fitness, was irrelevant to the trial court's best interest determination. Justin L.'s alleged lack of progress simply has no bearing on either respondent's fitness or the court's subsequent determination that termination of respondent's parental rights was in M.L.'s best interest.

¶ 38 In terms of the trial court's best-interest determination, the court stated that respondent's substance abuse issue "has prevented her from taking care of herself and making appropriate decisions not only as it relates to her, but as to [M.L.]." The court found that M.L.'s "physical safety" and achieving permanency in the "least disruptive placement" weighed in favor of terminating respondent's parental rights. The record reflects that sufficient evidence was presented to support this determination. The evidence showed that Justin L. was granted custody when M.L. was two years old because respondent was incarcerated and M.L. lived with Justin L. for "a long period" of time. In December 2015, M.L. was placed in respondent's care for "almost two years" but respondent subsequently relapsed and M.L. was removed from her care. Respondent testified that the "last time" she "received a phone call from [her] daughter," M.L. was calling "to come see [her]" but she could not because respondent was in a hotel room "[with] people *** using drugs ***." Respondent acknowledges that she has a "significant" substance-abuse problem. She stated, "When I'm actively using, I don't believe that I'm the best for [M.L.] ***." Indeed, M.L. stated that she thought respondent's parental rights should be terminated because "[respondent] always says she's going to be sober *** and that never happens. So [she was] not going to keep going through it because [she had] already been through it for fifteen years."

¶ 39 With respect to M.L.'s current placement, Nichols, the caseworker, testified that

M.L. appeared "comfortable" with her maternal great-grandmother, Gloria B. Further, Nichols stated that M.L. and Gloria B. have a "positive" relationship and a "close bond." Although there had been some difficulties as M.L. became acclimated to her new living arrangement, Nichols explained that M.L. was "improving" and she could rely on Gloria B. to be "consistent" and "stable" and this was "something that she's never really had with [respondent]."

¶ 40 Based on this evidence, we cannot say the trial court's finding that it was in M.L.'s best interest to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 41 C. Service Plans

¶ 42 The final potential issue identified by counsel is that service plans were not filed in the trial court as required by Section 6(a)(a) of the Children and Family Services Act. 20 ILCS 505/6a(a) (West 2016).

¶ 43 Section 6a(a) provides that "the Department shall develop a case plan designed to stabilize the family" and "[s]uch case plan shall be reviewed and updated every 6 months." 20 ILCS 505/6a(a) (West 2016). Further, the Juvenile Court Act of 1987 states that "the Department or agency, as appropriate, shall prepare and file with the court within 45 days of placement *** a case plan ***." 705 ILCS 405/2-10.1 (West 2016); see also *In re L.O.*, 2016 IL App (3d) 150083, ¶ 21, 65 N.E.3d 577 ("[W]e find that the procedural command contained in section 2–10.1 of the Act—that DCFS 'shall' file a service plan with the court within 45 days after the minor's placement in shelter care—is directory and not mandatory.").

¶ 44 Based on our review of the record, a client service plan *was* prepared by the caseworker. In its presentation of a factual basis for respondent's admission of unfitness, the

State asserted, in part, as follows:

> "We would also present the testimony of case worker Danielle Nichols who would testify that she has been the only case worker on this matter, she had it from the beginning. She drafted a client service plan in November of 2017. It contained basically four requirements. One was visitation, one was domestic violence counseling and treatment, same thing with substance abuse and for [respondent] to cooperate with the agency and in services.
>
> Ms. Nichols had the opportunity to evaluate that client service plan on April 2nd of 2018, and as to visitation, [domestic violence], substance abuse and cooperation, mom was found unsatisfactory on all of those."

Respondent's counsel subsequently stipulated to the State's factual basis. Further, on January 24, 2018, a dispositional report was filed and it included respondent's service plan. The service plan clearly delineated the goals that respondent was required to achieve in order to progress in this case. Accordingly, we find no meritorious claim regarding an alleged lack of client service plans could be asserted.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 47 Affirmed.