2019 IL App (4th) 190255-U

NO. 4-19-0255

FILED
September 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re D.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Adams County
Petitioner-Appellee,	)	No. 17JA36
v.	)	
Amy T.,	)	Honorable
Respondent-Appellant).	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Harris 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 April 2019, the trial court terminated the parental rights of respondent, Amy T., as to her minor child, D.T. (born April 18, 2017), after finding respondent unfit and that it was in D.T.'s best interests to do so. Respondent appealed the court's judgment. 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 July 12, 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.

¶ 3 I. BACKGROUND

¶ 4 On April 21, 2017, when D.T. was three days old, the State filed a petition, alleging D.T. was a neglected minor as defined by the Juvenile Court Act in that her environment was injurious to her health and welfare. 705 ILCS 405/2-3(1)(b) (West 2016). The State relied on the fact that respondent had three prior indicated reports against her related to her two other children between September 2014 and January 2015. In January 2015, the State brought neglect proceedings, and the two children were removed from respondent's custody by the Department of Children and Family Services (DCFS). In the neglect petition related to D.T., the State noted respondent "had not made substantial progress toward the return home of the two minor children. [Respondent] had made little progress in her mental-health counseling due to poor attendance and having little follow-through outside of therapy sessions. She had quit taking her mental health medications due to the pregnancy with [D.T.]"

¶ 5 In September 2017, respondent appeared at the adjudicatory hearing and admitted the allegations in the petition. The trial court accepted respondent's admission and entered an adjudicatory order, finding D.T. was a neglected minor.

¶ 6 In October 2017, the trial court conducted a dispositional hearing, relying only on the caseworker's dispositional report as evidence. The court found it was in the best interests of D.T. and the public that D.T. be made a ward of the court and adjudicated a neglected minor. The court further found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, and discipline the minor, and it would be contrary to the minor's health, safety, and best interest to be in her custody. The court placed guardianship and custody with the guardianship administrator of DCFS.

¶ 7 In February 2019, the State filed a motion for termination of respondent's parental rights. The State alleged respondent was an unfit parent because she failed to make reasonable efforts to correct the conditions which were the bases for the removal of D.T. and respondent failed to make reasonable progress toward the return of the minor within the nine-month periods between September 2017 and June 2018 and June 2018 and March 2019. 750 ILCS 50/1(D)(m) (West Supp. 2017).

¶ 8 On April 1, 2019, the trial court conducted a fitness hearing in respondent's absence. Her attorney requested a continuance "to some future point in time," stating he had "had no contact with [his] client outside of court in a substantial period of time, and only limited contact with her during court proceedings on a couple of occasions." The court denied counsel's request. The State asked the court to take judicial notice of certain orders in the current case, specifically, the petition for adjudication, the adjudicatory order, and the dispositional order. The State also requested the court take judicial notice of respondent's absence at the fitness hearing originally scheduled for February 26, 2019. The State further requested the court take judicial notice "with regard to certain items concerning visitation in this case" when respondent's visits were suspended. The court stated it could take judicial notice of its own records and items in the court file related to the pending motion and the applicable nine-month periods.

¶ 9 The State then presented the testimony of Kelsey Platt, the caseworker assigned to the case. Platt testified she had been involved with respondent since August 2015 in the case related to respondent's other children. Platt became the caseworker for D.T. due to respondent's lack of progress in the other case. Platt testified that the October 2017 service-plan goals consisted of (1) parenting education and visitation, (2) cooperation with DCFS and her agency, Chaddock, (3) domestic-violence counseling, (4) substance-abuse counseling, (5) mental-health

counseling, and (6) obtaining stable housing. Respondent's progress on the plan was rated as unsatisfactory in October 2017, January 2018, March 2018, and December 2018. Her progress was rated satisfactory in July 2018 because she had re-engaged in services, though her participation was short-lived. She was later unsuccessfully discharged from mental-health and substance-abuse counseling for lack of attendance.

¶ 10 Platt testified about (1) her many conversations with respondent about the need to participate in services, (2) respondent's numerous missed appointments and visits, (3) respondent's inability to provide appropriate supplies and snacks during visitation, and (4) respondent's continued struggle with substance abuse. Platt said she attempted to contact respondent four times during the month of March 2019 but she was unable to communicate with her. The State rested, and no further evidence was presented.

¶ 11 The trial court found the State had proved both allegations of unfitness stated in the petition—failure to make both reasonable efforts and reasonable progress—by clear and convincing evidence. The court stated:

> "The evidence today has been that during the nine-[month] periods, which are alleged by the People, the mother was in and out of some services, at times engaged in services, at other times not, at different times without any contact with the caseworker and at different times was not complying with requests for substance abuse testing as a part of the service plan. The most that can be said for the mother's situation is that she did engage in some services during the relevant nine-month periods, but efforts do not always translate into progress, and that seems to be the situation here. There never did come a time when the mother had made enough progress toward the return home of the minor that there could ever

> be a recommendation made for unsupervised visits between the minor and the minor's mother. That never happened. No recommendation was ever made that the minor could be returned to the custody of the mother throughout the nine-month periods and the line appears to be that after some sporadic efforts on the part of the mother, there came a time during the second nine-month period that the mother completely disengaged with services, dropped out of contact with the caseworker for long periods of time, and as a result of that, the court would find today that both of the allegations of unfitness with regard to the mother have also been proven by clear and convincing evidence."

¶ 12 Immediately following the trial court's fitness finding, the court conducted the best-interest hearing. The State again presented the testimony of Platt, who testified that D.T. had lived in her current traditional foster home since birth. Platt said she had visited the foster home at least once a month. The foster mother, Lindee, "is very loving towards" D.T.; they share a strong bond. Also in the home is Lindee's adopted son. The two children are "very open in wanting to play" and are "very connected." They see each other as brother and sister. Lindee is providing for all of D.T.'s needs and is committed to adopting her.

¶ 13 The trial court found the State had proved by a preponderance of the evidence that it was in D.T.'s best interests to terminate respondent's parental rights. This appeal followed. In June 2019, appointed appellate counsel filed a motion to withdraw and served a copy on respondent. On its own motion, this court granted respondent until July 12, 2019, to file a response. She has not done so.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent's appellate counsel filed a motion to withdraw and attached a brief in support of that motion. See *In re Austin C.*, 353 Ill. App. 3d 942, 945 (2004) (citing *In re S.M.*, 314 Ill. App. 3d 682, 685-86 (2000), and stating the proper *Anders* procedure in parental-termination cases.) He contends this case presents no potentially meritorious issues for review. We agree, grant counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 16 A. Finding of Unfitness

¶ 17 In compliance with *S.M.*, counsel identifies claims that could possibly be made on appeal. First, he contends respondent could challenge the trial court's findings of unfitness on both grounds alleged by the State. As for the reasonable-effort grounds, counsel claims there may be a potential argument that respondent *did* make some effort to engage in the services provided in her case plan. For example, respondent completed domestic-violence treatment in April 2016 and had no further reported incidents of domestic violence. She also re-engaged in substance-abuse counseling and entered and successfully completed inpatient treatment in March 2018.

¶ 18 Whether a parent has made reasonable efforts is "a subjective standard, focusing on the amount of effort that is reasonable for the particular parent whose rights are at stake." *In re C.M.*, 305 Ill. App. 3d 154, 164 (1999). Respondent could argue on appeal that during the four-month period between January 2018 and April 2018 (which is included in one of the alleged nine-month periods), she expended considerable effort toward her recommended tasks.

¶ 19 However, an appellate court need not consider the sufficiency of evidence for other grounds of parental fitness if any one ground is proven by clear and convincing evidence (*In re C.W.*, 199 Ill. 2d 198, 217 (2002)). For that reason, counsel asserts that any potential

argument claiming error related to respondent's reasonable efforts is thwarted by the clear and convincing evidence presented by the State on respondent's failure to make reasonable progress.

¶ 20 The question of reasonable progress is an objective one, which requires the trial court to consider whether respondent's actions would support the court's decision to return the child home in the near future. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. In order for there to be reasonable progress, there must be some "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). "[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." *Id.* at 216-17. Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006).

¶ 21 Here, the evidence reflected and the trial court reasonably found that during the majority of the relevant periods, respondent's participation in services was inconsistent at best. She would often go absent for periods of time and not participate in services, not attend visits, not comply with drug testing, and not communicate with her caseworker. The court stated:

> "The most that can be said for the mother's situation is that she did engage in some services during the relevant nine-month periods, but efforts do not always translate into progress, and that seems to be the situation here. There never did come a time when the mother had made enough progress toward the return home of the minor that there could ever be a recommendation made for unsupervised

> visits between the minor and the minor's mother. That never happened. No recommendation was ever made that the minor could be returned to the custody of the mother throughout the nine-month periods and the line appears to be that after some sporadic efforts on the part of the mother, there came a time during the second nine-month period that the mother completely disengaged with services, dropped out of contact with the caseworker for long periods of time, and as a result of that, the Court would find today that both of the allegations of unfitness with regard to the mother have also been proven by clear and convincing evidence."

¶ 22 Counsel contends this issue renders any potential claim regarding reasonable progress meritless, and we agree. The State presented sufficient evidence to prove respondent failed to make reasonable progress as defined by section 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp 2017)). As counsel acknowledges, any compliance or participation on respondent's part was short-lived. Further, we note that D.T. was removed from respondent's care because her two older siblings were in DCFS custody and respondent had made no progress toward *their* return. With respondent's lack of demonstrable movement toward *their* return, there can be no meritorious argument presented on appeal that respondent has demonstrated reasonable progress to properly care for D.T. Accordingly, the trial court's finding that respondent failed to make reasonable progress was not only *not* against the manifest weight of the evidence, but was supported by overwhelming evidence.

¶ 23 B. Best-Interest Finding

¶ 24 Appellate counsel states he reviewed the transcripts for the best-interests proceedings and found no irregularities. After reviewing the transcripts provided, we likewise

conclude no irregularities are present and no arguably meritorious issues may be raised on appeal. We note that respondent did not present evidence concerning the best interests of D.T., and Platt testified that D.T. was thriving in her foster home and that her foster parent hoped to adopt her. Her foster home was the only home D.T. knew, as she was placed with her foster parent upon her release from the hospital after birth.

¶ 25 The State must prove that termination is in the child's best interests by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). "The court's best-interest finding will not be reversed unless it is against the manifest weight of the evidence." *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32 (2007).

¶ 26 Again, the trial court's finding that termination of respondent's parental rights was in D.T.'s best interests was not only *not* against the manifest weight of the evidence but supported by overwhelming evidence. Thus, we conclude that no reasonable argument challenging the court's best-interest finding could conceivably be raised on appeal.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we agree with appellate counsel that no meritorious issue can be raised on appeal. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment. *Anders*, 386 U.S. at 744.

¶ 29 Affirmed.