2019 IL App (4th) 190256-U

NO. 4-19-0256

FILED
September 10, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re S.R., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 17JA16
v.	)	
Chanta R.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, granting appellate counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967),in the absence of meritorious issues to raise on appeal.

¶ 2 In February 2019, the trial court found respondent mother, Chanta R., an unfit parent to her son, S.R. (born March 3, 2017). In April 2019, the court found termination of respondent's parental rights would be in the minor's best interests. Respondent appealed the court's judgment terminating her parental rights.

¶ 3 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's appellate attorney moves to withdraw as counsel. See *In re S.M.*, 314 Ill. App. 3d 682, 685-86, 732 N.E.2d 140, 143 (2000) (holding *Anders* applies to termination of parental rights cases and providing the proper procedure to be followed by appellate counsel). Counsel states he read the record in this case. According to counsel, after his review, he concluded this case presents no

viable grounds for an appeal and any appeal would be "frivolous." He supported his motion with a brief, containing potential issues and argument as to why the issues lack merit. Counsel served respondent with a copy of his motion and brief. After examining the record and executing our duties consistent with *Anders*, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In March 2017, the State filed a petition for adjudication of wardship, alleging S.R. was neglected pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2016)), because respondent failed to "correct the conditions which resulted in a prior adjudication of parental unfitness to exercise guardianship and custody of [S.R.'s seven] siblings *** in Champaign County case number 2010-JA-46."

¶ 7 On March 3, 2017, respondent gave birth to S.R. The following day, a caller reported the birth and respondent's alarming and inattentive behavior to the Department of Children and Family Services (DCFS). After a March 7, 2017, shelter care hearing, the trial court granted DCFS temporary custody of S.R. (S.R.'s father is deceased.)

¶ 8 In May 2017, the trial court entered an adjudicatory order finding S.R. neglected based on the following facts:

> "Despite the passage of significant time since [respondent] was found unfit to exercise custody and guardianship of [S.R.'s] siblings in Champaign County case No. 10-JA-46, she has never corrected the conditions that resulted in that finding. She never completed domestic violence counseling or individual counseling,

> she believes that the findings in the prior case were based on lies, she denies any responsibility for harming her children despite her conviction for aggravated battery to a child and her mandatory registration as a Violent Offender Against Youth, and instead she places all blame for the harm to [S.R.'s] siblings on her former boyfriend. Since he is no longer in her life, she believes that what made her unfit to have custody of [S.R.'s] siblings has been removed, and she can safely care for her helpless two-month old [son]. [Respondent] still has no understanding of the harm that domestic violence worked on her older children or her role in it, and that lack of understanding creates a dangerous environment for [S.R.] in [respondent's] custody."

In a June 2017 dispositional order, the trial court (1) found respondent unfit, (2) made S.R. a ward of the court, and (3) granted DCFS guardianship and custody.

¶ 9 B. Termination Proceedings

¶ 10 In November 2018, the State filed a motion for termination of respondent's parental rights. The State alleged respondent was an unfit parent because she failed (1) to make reasonable progress toward the return of S.R. during any nine-month period following the adjudication of neglect, specifically January 29, 2018, to October 29, 2018 (750 ILCS 50/1 (D)(m)(ii) (West 2016)), and (2) to maintain a reasonable degree of interest, concern, or responsibility as to S.R.'s welfare (750 ILCS 50/1(D)(b) (West 2016)).

¶ 11 1. *Fitness Hearing*

¶ 12 In the spring of 2019, the trial court conducted a bifurcated hearing on the motion for termination of parental rights, first considering respondent's fitness. The parties presented the following relevant testimony over nonconsecutive days.

¶ 13 a. Jacqueline Price

¶ 14 Jacqueline Price, a child welfare specialist for Lutheran Social Services of Illinois (LSSI), testified she became the caseworker for respondent's case beginning in February 2018. The services required of respondent included domestic-violence classes, a psychological evaluation, a parenting-capacity assessment, and individual counseling. Furthermore, respondent needed to maintain stable housing and income, and engage in visitation with S.R.

¶ 15 Regarding compliance, Price testified respondent remained employed, maintained safe and stable housing, and completed parenting classes. In February 2018, LSSI staff supervised respondent's visitation with S.R. In July or August 2018, respondent's visitation with S.R. switched to third-party supervised visitation where Grace Mitchell of the Family Advocacy Center of Champaign County (FACC) provided supervision.

¶ 16 b. Rachel Kramer

¶ 17 Rachel Kramer, program director for LSSI, testified that in addition to respondent's other services she was also referred to parenting classes, given random drug screens, and required to maintain contact with LSSI.

¶ 18 c. Respondent

¶ 19 Respondent testified she completed everything requested of her in the way of services, including individual counseling with Grace Mitchell at FACC.

¶ 20 d. Grace Mitchell

¶ 21 Grace Mitchell, executive director at FACC, testified she served as a mentor to respondent, as opposed to a counselor. As respondent's mentor, Mitchell helped respondent understand what was going on in the case. Mitchell also testified respondent completed parenting classes in March 2018 and at the time of the hearing, Mitchell continued to supervise visits between respondent and S.R. Concerning visitation, Mitchell testified she addressed a few concerns she had with respondent.

¶ 22 e. Dr. Judy Osgood's Psychological Evaluation

¶ 23 The parties stipulated to the admission of Dr. Judy Osgood's February 2018 psychological evaluation and August 2018 parenting-capacity assessment. The court took judicial notice.

¶ 24 Dr. Osgood reported respondent "presented herself as a low[-]functioning adult with apparent cognitive and developmental deficits." When discussing respondent's familial and personal history, respondent "reported having experienced physical abuse as a child and domestic violence as an adult. Contradicting reports provided, [respondent] denied she physically abused her children precipitating in DCFS taking custody of her children in 2010."

¶ 25 Respondent told Dr. Osgood that she completed domestic-violence treatment, contrary to reports, and that she lost all of her older children "because of one man," who she blamed for the beatings her children received. In relation to her 2010 conviction for aggravated battery to a child, respondent said, " 'They accused me.' Defensively, [respondent] said she would not tell investigators who beat her kids. She stated, 'My children were not returned' which she feels resulted from, 'Me not telling, they weren't sure if I was still with [the boyfriend].' " Dr. Osgood found that respondent "presented with significant impairment in her judgment and limited insight into her parental failures and risk factors in relation to her DCFS cases."

Furthermore, testing showed respondent exhibited a full-scale IQ score of 65, combined with chronic deficits in adaptive functioning.

¶ 26 Dr. Osgood recommended (1) all contact between respondent and S.R. remain supervised at all times due to respondent's intellectual disability and history of child abuse where Dr. Osgood considered respondent at high risk of harming any child left unsupervised, (2) respondent complete a psychiatric evaluation for consideration of medication to treat her depression, and (3) due to respondent's intellectual disability and severe impairments in social-adaptive functioning respondent should be considered for placement in a community-based group home.

¶ 27 f. Dr. Judy Osgood's Parenting-Capacity Assessment

¶ 28 In Dr. Osgood's parenting-capacity assessment, she reported respondent's strengths as "willing to cooperate with DCFS along with treatment and services as recommended." With supervision, Dr. Osgood determined respondent "demonstrated an ability to give [S.R.] his bottle, change his diaper[,] and rock him to sleep."

¶ 29 However, Dr. Osgood found that respondent demonstrated an inability to understand and apply appropriate parenting skills and to understand S.R.'s developmental level. Respondent lacked flexibility and problem-solving skills necessary to care for a toddler without assistance. Respondent also exhibited little insight into the reasons DCFS terminated her parental rights to her older children.

¶ 30 Dr. Osgood's recommendations mirrored her recommendations in the psychological evaluation above.

¶ 31 g. Trial Court's Findings

¶ 32 Following the fitness hearing, the trial court found respondent maintained a reasonable degree of interest, concern, or responsibility as to S.R.'s welfare. However, the court determined the State proved by clear and convincing evidence that respondent was unfit where she failed to make reasonable progress toward the return of S.R. during any nine-month period following the adjudication of neglect, specifically, January 29, 2018, to October 29, 2018.

¶ 33 2. *Best-Interest Hearing*

¶ 34 In April 2019, the trial court held a separate best-interest hearing. The parties presented the following relevant testimony.

¶ 35 a. Best-Interest Reports

¶ 36 LSSI filed a best-interest report. In the report, LSSI wrote that respondent recently moved in with an aunt in Urbana, Illinois, where she stopped working and applied for disability benefits following her recent multiple sclerosis diagnoses. Respondent continued to attend her supervised visitation with S.R. where visits went well. At visits, respondent played with S.R., talked to him, and showed him videos. S.R. remained developmentally on track in his foster placement where two of his half-siblings also resided. LSSI recommended termination of respondent's parental rights.

¶ 37 Court Appointed Special Advocates (CASA) filed a best-interest report. In the report, CASA found S.R. resided in a foster placement with two of his half-siblings since he was three days old. S.R. shows strong attachment to his foster mother and the foster mother has expressed her wish to adopt S.R. as she previously adopted his two half-siblings. Furthermore, CASA stated, "[S.R.'s] best chance of permanency is to remain in his current foster home where he experiences love and care[.]" While respondent attended supervised visits with S.R., visits

never progressed to unsupervised. CASA recommended termination of respondent's parental rights.

¶ 38 b. Clarence R.

¶ 39 Clarence R., respondent's father and a retired University of Illinois police officer, testified that with family assistance, respondent demonstrated the ability to care for S.R. Clarence stated it was in S.R.'s best interest to remain with his mother.

¶ 40 c. Trial Court's Finding

¶ 41 At the conclusion of the evidence, the trial court considered all the statutory factors and found it to be in S.R.'s best interest to terminate respondent's parental rights.

¶ 42 C. Respondent's Appeal and the Motion to Withdraw

¶ 43 At the conclusion of the termination hearing, respondent indicated she wished to appeal the trial court's judgment. The trial court appointed John B. Hensley to represent her on appeal. In June 2019, appellate counsel filed a motion to withdraw and served a copy on respondent.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 On appeal, appellate counsel argues this case presents no potentially meritorious issue for review. We agree, grant appellate counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 47 A. Fitness Finding

¶ 48 For purposes of evaluating whether there exists arguable merit to claims that respondent could raise on appeal regarding her fitness, we must bear in mind that any one ground, properly proved, is sufficient to affirm. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049,

796 N.E.2d 1175, 1181-82 (2003). Further, a trial court's unfitness finding will not be disturbed on review unless contrary to the manifest weight of the evidence, meaning 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, 830 N.E.2d 508, 516-17 (2005); *Janine M.A.*, 342 Ill. App. 3d at 1049. As such, we agree there would be no arguable merit to a challenge to the court's finding of unfitness because, at a minimum, the court's finding respondent failed to make reasonable progress toward the return of S.R. during the nine-month period between January 29, 2018, and October 29, 2018, is not contrary to the manifest weight of the evidence.

¶ 49 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, 51 N.E.3d 1020. 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, 752 N.E.2d 1030, 1047 (2001).

¶ 50 Here, the evidence reflected and the trial court reasonably found that at the end of the nine-month period respondent was no closer to having S.R. returned to her care than at the start of the nine-month period. While respondent showed interest in S.R.'s return, the court found based on Dr. Osgood's evaluations and the caseworker's testimony that respondent was incapable of caring for S.R. 24 hours a day, 7 days a week.

¶ 51 Dr. Osgood conducted a psychological evaluation and a parenting-capacity assessment of respondent, finding that respondent operates at a very low level intellectually with apparent cognitive and developmental deficits. Dr. Osgood considered respondent a high risk of

harming children if left unsupervised. Dr. Osgood recommended respondent consider placement in a community-based group home.

¶ 52 Furthermore, respondent failed to take responsibility for her prior involvement with DCFS where she exhibited little insight into the reasons DCFS terminated her parental rights to her older children. At the time of respondent's fitness hearing, she still engaged in only supervised visitation and had failed to complete all of her required services.

¶ 53 In light of the foregoing, the trial court's finding was not contrary to the manifest weight of the evidence. That is, the State met its burden of establishing that between January 29, 2018, and October 29, 2018, respondent made no reasonable progress toward the possibility that the court in the near future would be able to order S.R. returned to respondent. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1068, 808 N.E.2d 596, 605 (2004).

¶ 54 B. Best-Interest Finding

¶ 55 Similarly, we conclude there is no arguable merit to a claim it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in S.R.'s best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894, 859 N.E.2d 1046, 1055-56 (2006). A reviewing court will not disturb a trial court's best-interest determination unless it is against the manifest weight of the evidence. *S.M.*, 314 Ill. App. 3d at 687. In making a best-interest determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)), including the child's physical safety and welfare, including food and health; need for permanence, stability and continuity; sense of attachment, love, security, and familiarity; community ties; and the uniqueness of every child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 56 Here, the trial court heard evidence from respondent's father that it was in S.R.'s best interest to return S.R. to respondent's care. However, Clarence R. provided no factual basis for his opinion. The trial court also considered best interest reports of LSSI and CASA, both of which recommended termination of parental rights.

¶ 57 LSSI reported that respondent moved in with an aunt after respondent stopped working due to her multiple sclerosis diagnosis. LSSI reported that respondent's visits with S.R. went well but visitation remained supervised.

¶ 58 CASA reported that S.R. remained in the same foster placement he had been in since he was three days old. S.R.'s two half-siblings also resided in his foster placement, with the foster parents having adopted both children and the foster mother having expressed interest in adopting S.R. as well. The reports indicated S.R. exhibited a strong attachment to his foster mother and that he was thriving and developing on track.

¶ 59 In looking at the evidence in conjunction with the statutory factors, the trial court found it was in S.R.'s best interest to terminate respondent's parental rights. Given the foregoing, the court's finding terminating respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 60 C. Motion to Withdraw

¶ 61 In *S.M.*, 314 Ill. App. 3d at 685-86, this court set forth the proper procedures for appellate counsel's request to withdraw based on an *Anders* motion in parental rights termination cases. First, we required counsel to set out any irregularities or potential errors in a brief that may arguably be meritorious in his client's judgment. *Id.* at 685. Second, we required counsel to sketch the argument in support of the issues that could be raised and explain why he believed they are frivolous *if* such issues are identified. *Id.* (In *In re Austin C.*, 353 Ill. App. 3d 942, 946,

823 N.E.2d 981, 984 (2004), we clarified this statement by changing "if" in the above statement to "as to any such issue identified," requiring counsel to identify, argue, and explain the frivolity of all potential issues.) Third, we required counsel to conclude the case presented no viable grounds for appeal. *Id.* Fourth, we required counsel to include the transcripts of the fitness and best-interest hearings. *Id.*

¶ 62 In compliance with *S.M.*, appellate counsel in his brief sketches the argument in support of respondent's fitness but then explains why the argument is frivolous. After examining the record, the motion to withdraw, and appellate counsel's brief, we agree with counsel that this appeal presents no issues of arguable merit. Counsel's motion and brief sufficiently comply with the above procedures. We therefore grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment.

¶ 65 Affirmed.