2024 IL App (4th) 231079-U

NO. 4-23-1079

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 22, 2024
Carla Bender
4th District Appellate
Court, IL

In re K.P., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 21JA419
v.	)	
Keimier J.,	)	Honorable
Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment where no meritorious issues could be raised on appeal. The court's fitness and best interest findings were not against the manifest weight of the evidence.

¶ 2 In August 2023, the State filed a motion to terminate the parental rights of respondent, Keimier J., to her minor child, K.P. (born in 2020). K.P.'s father is not a party to this appeal. In October 2023, the trial court granted the State's petition and terminated respondent's parental rights.

¶ 3 Respondent appealed. This court appointed counsel to represent respondent. Thereafter, counsel filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), arguing respondent's appeal presents no potentially meritorious issues for review. We grant the motion and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On November 24, 2021, the State filed a petition for adjudication of wardship, alleging K.P. was neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)), in that K.P.'s environment was injurious to her welfare. The State alleged respondent engaged in acts of domestic violence in K.P.'s presence. The State also alleged K.P. was neglected under section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2020)) because respondent did not have appropriate food for K.P. and refused to provide proper clothing for her. Respondent subsequently stipulated to the acts of domestic violence and that she was unfit. K.P. was made a ward of the court, with both guardianship and custody awarded to the Illinois Department of Children and Family Services (DCFS).

¶ 6 On August 31, 2023, the State filed a petition for termination of parental rights, alleging respondent was unfit (1) under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2022)) because she failed to maintain a reasonable degree of interest, concern, or responsibility for K.P's welfare and (2) under sections 1(D)(m)(i) and (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i)-(ii) (West 2022)) for (a) failure to make reasonable efforts to correct the conditions that were the basis for the removal of K.P. during a nine-month period after the adjudication of neglect and (b) failure to make reasonable progress toward the return of K.P. to her care during a nine-month period after the adjudication of neglect. The State alleged two nine-month periods of February 28, 2022, to November 28, 2022, and November 28, 2022, to August 28, 2023.

¶ 7 On September 28, 2023, the trial court held a hearing on the petition. Katrina Boykins, a caseworker for DCFS, testified she had been K.P.'s caseworker since the case was

opened. Boykins testified respondent participated in an integrated assessment and, under that assessment and a related service plan, DCFS recommended respondent engage in individual therapy, a substance-abuse assessment, mental-health services, domestic-violence counseling, and parenting education. She was also given tasks to maintain stable housing, cooperate with DCFS, and engage in visitation. Generally, respondent was in contact with Boykins at least once per month, but usually more often, either via text messaging, phone calls, or in person contacts. However, there were a few occasions when communications waned.

¶ 8 Boykins testified DCFS had concerns about respondent's mental-health status based on respondent's reports of hearing voices and engaging in self-harm. Respondent completed a mental-health assessment, which resulted in recommendations for individual and group counseling and possibly medication. Respondent refused to take medication, stating she needed to gain weight before taking medication as she thought she was underweight. Respondent never gave Boykins any documentation of such a condition from a physician. Respondent also never engaged in group counseling. Throughout the case, respondent would begin sessions for individual counseling but then stop attending. Respondent was never successfully discharged from individual counseling, and there was no certificate of completion.

¶ 9 Evidence was provided respondent lived with her mother, which was a source of conflict for her. Respondent also suffered from depression and grief related to a car accident during which she was driving. Respondent was injured in the accident and her sister was killed. In July 2023, respondent was asked to complete a psychological assessment, but it could not be completed. During the assessment, respondent reported she was hearing voices, which were telling her to harm herself. The service provider stopped the assessment, and an ambulance was called to take respondent to the hospital. When the ambulance arrived, respondent changed her

story and said she was fine. She was transported to the hospital but was later released and did not receive any treatment.

¶ 10 Respondent was also referred to a program for domestic-violence services. Boykins never received any information that respondent completed an assessment for those services or completed any classes or counseling for such services.

¶ 11 Boykins testified DCFS also had concerns about substance abuse because respondent had positive drug tests for tetrahydrocannabinol (THC). Respondent had also missed 15 of 18 drug tests. Respondent took part in an assessment, and it was recommended she attend substance-abuse classes. Respondent initially attended but then began having absences, and she eventually dropped out and did not reengage with the services. She never successfully completed the program.

¶ 12 Boykins testified respondent generally engaged in supervised visits with K.P. twice per week but missed some visits. Visit time did not increase over the course of the case, and visits continued to be supervised. Respondent brought food and snacks to the visits but not toys or gifts. Respondent did not attend any doctor's appointments for K.P. Boykins testified respondent would get annoyed at visits, answer telephone calls, and use her electronic tablet. Respondent once told K.P. respondent's mother was calling, and she was more important than K.P. However, there was also evidence respondent would play with K.P. in a loving manner. Boykins testified respondent was unable to redirect K.P. during visits and did not prevent K.P. from running into the street when they were outside. Respondent was recommended for parenting education. However, parenting-education programs required the participant to be drug-free, and respondent could not be referred because of her positive THC tests and inconsistency with completing drug testing.

¶ 13 The trial court found respondent failed to show a reasonable degree of interest, concern, or responsibility as to K.P.'s welfare and failed to make reasonable efforts and reasonable progress toward the return of K.P. within nine months. As a result, the court found her unfit.

¶ 14 The trial court next held the best interest portion of the hearing. Boykins submitted a report specially addressing the statutory factors applicable to the best interest determination and recommending termination of respondent's parental rights. The report showed K.P. had been placed in the home of her maternal aunt for most of her life, and her aunt had been consistently taking care of all of K.P.'s needs. K.P. was bonded to her foster family, which provided a safe environment for her. K.P.'s aunt was dedicated to providing a permanent home for K.P.

¶ 15 The trial court found it was in the best interest of K.P. to terminate parental rights. Accordingly, the court entered an order terminating parental rights and changing the permanency goal to adoption. Respondent appealed, and this court appointed counsel to represent respondent.

¶ 16 II. ANALYSIS

¶ 17 Appellate counsel moved to withdraw. In her motion, counsel stated she read the record and found no issues of arguable merit. Counsel stated she would advise respondent via certified mail at respondent's last known address of counsel's opinion and that respondent would have an opportunity to respond. Counsel provided a certificate of mailing showing notification via certified mail. Counsel supports her motion with a memorandum of law providing a statement of facts, a discussion of potential issues, and arguments why those issues lack arguable

merit. This court advised respondent she had until January 5, 2024, to respond to the motion, and she did not do so.

¶ 18 Counsel submits it would be frivolous to argue the trial court erred in (1) finding respondent unfit and (2) finding it was in K.P.'s best interest to terminate respondent's parental rights.

¶ 19 A. Unfitness Determination

¶ 20 Counsel first submits no meritorious argument can be made the trial court erred in finding respondent unfit.

¶ 21 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2022)), the involuntary termination of parental rights is a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as defined in the Adoption Act. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the State proves unfitness, it then must prove by a preponderance of the evidence that termination of parental rights is in the best interest of the child. *In re D.T.*, 212 Ill. 2d 347, 363-67, 818 N.E.2d 1214, 1226-28 (2004).

¶ 22 Parental rights may not be terminated without the parent's consent unless the trial court first determines, by clear and convincing evidence, the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516 (2005). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *Gwynne P.*, 215 Ill. 2d at 349, 830 N.E.2d at 514.

¶ 23 Under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2022)), a parent may be found 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 *** minor." A "parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication" constitutes a failure to make reasonable progress for purposes of section 1(D)(m)(ii). 750 ILCS 50/1(D)(m)(ii) (West 2022).

¶ 24 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, 871 N.E.2d 835, 844 (2007). This court has explained reasonable progress exists when a trial court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re N.G.*, 2018 IL 121939, ¶ 29, 115 N.E.3d 102.

¶ 25 Here, the State proved by clear and convincing evidence respondent failed to make reasonable progress toward the return of K.P. The record is clear respondent failed to engage in tasks assigned under the integrated assessment. Respondent failed to complete any of the recommended mental-health, substance-abuse, domestic-violence, and parenting services. While respondent attended visitation, she often did not appropriately interact with K.P. Nothing in the record indicates K.P. would be able to return to respondent's custody in the near future.

¶ 26 Based on this evidence, respondent did not "substantially fulfill *** her obligations under the service plan," and therefore, she did not make reasonable progress toward the return of K.P. to her care. 750 ILCS 50/1(D)(m)(ii) (West 2022). Accordingly, we agree counsel would be unable to present a meritorious argument the trial court's finding was against

the manifest weight of the evidence. Thus, the court's determination of unfitness on that basis was not against the manifest weight of the evidence, and we need not discuss the alternate findings of unfitness. *Gwynne P.*, 215 Ill. 2d at 349, 830 N.E.2d at 514.

¶ 27 B. Best Interest Determination

¶ 28 Counsel next submits the trial court did not err in finding it was in K.P.'s best interest to terminate respondent's parental rights.

¶ 29 Once a parent has been found unfit under one or more grounds in the Adoption Act, the State must establish by a preponderance of the evidence it is in the minor's best interest to terminate parental rights. 705 ILCS 405/2-29(2) (West 2022); *In re Tyianna J.*, 2017 IL App (1st) 162306, ¶ 97, 70 N.E.3d 282. " 'Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not.' " *In re D.D.*, 2022 IL App (4th) 220257, ¶ 50, 215 N.E.3d 302 (quoting *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006)). Once a parent is found unfit, the focus shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Thus, following an unfitness finding, the trial court focuses on the needs of the child in determining whether parental rights should be terminated. *In re J.V.*, 2018 IL App (1st) 171766, ¶ 249, 115 N.E.3d 1099. " 'A child's best interest is superior to all other factors, including the interests of the biological parents.' " *J.V.*, 2018 IL App (1st) 171766, ¶ 249 (quoting *In re Curtis W.*, 2015 IL App (1st) 143860, ¶ 52, 34 N.E.3d 1185).

¶ 30 The Juvenile Court Act lists several factors the trial court should consider when making a best interest determination. Those 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." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

Also relevant in a best interest determination is the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would have on the child's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871, 945 N.E.2d 81, 92 (2011). This court will not reverse a trial court's finding it was in a minor's best interest to terminate his or her parental rights unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010).

¶ 31 Here, the record shows the trial court's determination was not against the manifest weight of the evidence. The court noted the requirements of the Juvenile Court Act, and its findings were supported by the evidence. In particular, Boykins submitted a report specially addressing the statutory factors. The uncontroverted evidence showed K.P.'s foster parent met her needs and was committed to providing a permanent and stable home for K.P. Under these circumstances, where the child is well cared for in her placement and respondent's inability to provide permanency in the foreseeable future was well established, the facts do not clearly

demonstrate the court should have reached the opposite result in making its best interest determination. Accordingly, we agree with counsel it would be frivolous to argue the court's best interest determination was against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

¶ 33 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel this appeal presents no issue of arguable merit. Accordingly, for the reasons stated, we grant the motion to withdraw as appellate counsel and affirm the trial court's judgment.

¶ 34 Affirmed.