2024 IL App (4th) 230938-U

NOS. 4-23-0938, 4-23-0939, 4-23-0940 cons.

FILED
March 15, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re La. P., K.P., and Li. P., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	Nos. 20JA18
v.	)	20JA19
LaQuita P.,	)	23JA134
Respondent-Appellant).	)	
	)	
	)	Honorable
	)	Francis M. Martinez,
	)	Judge Presiding.

PRESIDING JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's dispositional order making the minors wards of the court.

¶ 2 On September 18, 2023, the trial court entered a dispositional order finding respondent, LaQuita P., unfit or unable for some reason other than financial circumstances alone to care for, protect, train, or discipline her three minor children, K.P. (born December 2008), La. P. (born June 2019), and Li. P. (born February 2022). Respondent appealed. Appellate counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), on the basis he cannot raise any potentially meritorious argument on appeal. Counsel's notice of filing and proof of service indicate he sent a copy of his motion and brief to respondent by mail. Respondent has filed a response to the motion to withdraw. After reviewing the record, counsel's

brief, and respondent's response, we grant counsel's motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In January 2020, the State filed petitions seeking to adjudicate La. P. and K.P. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)). The petitions alleged the minors were neglected and their environment was injurious to their welfare due to (1) respondent having a history of domestic violence in her relationships and (2) respondent and La. P.'s father engaging in domestic violence. (La. P.'s petition also alleged her father had a substance abuse problem. La. P.'s father is not party to this appeal.) During arraignment, respondent named K.P.'s father as James J., who resided in Atlanta, Georgia. (James J. is not party to this appeal.)

¶ 5 The minors were adjudicated neglected. The Illinois Department of Children and Family Services (DCFS) opened an intact case, and guardianship and custody of the minors remained with respondent. A dispositional order entered in October 2020 found respondent fit, willing, and able to care for the minors.

¶ 6 On April 4, 2023, the trial court held a status hearing for the ongoing intact case. Respondent was not present. The State asked for leave to file a motion to modify guardianship and custody, which the court granted. The State also informed the court it planned to file a neglect petition for respondent's youngest child, Li. P. (born February 2022). The guardian *ad litem* (GAL) asked the court to order the minors not be taken out of state due to previous comments from respondent about moving to Georgia. The court entered the order and an order for respondent to appear at the next court date.

¶ 7 On April 6, 2023, the State filed the motion to modify guardianship and custody as to La. P. and K.P. and the neglect petition for Li. P. The neglect petition for Li. P. alleged she was a neglected minor under the Juvenile Court Act in that (1) she was left without supervision for an unreasonable period of time and (2) her environment was injurious to her welfare as respondent left her without a reasonable care plan.

¶ 8 The motion to modify alleged a change in circumstances since the dispositional order due to several incidents reported by the caseworkers. First, a hotline call on January 27, 2023, reported La. P. was seen outside alone, knocking on a neighbor's door, while respondent was inside sleeping. A second hotline call on February 6, 2023, reported La. P. was found wandering around outside the home alone. In a third incident reported by the caseworker, the caseworker communicated with respondent to schedule a home visit on February 28, 2023. Respondent stated she would "no longer be accepting visits from the caseworker because she did not see any reason for caseworkers to continue to visit her home." Finally, the caseworker reported she attempted to visit respondent's home in March 2023 and respondent told the caseworker she was not going to let her back into her home.

¶ 9 On April 7, 2023, the trial court held an arraignment on the new neglect petition and presentment of the modification petition. Respondent was not present. Respondent's counsel stated he had exchanged e-mails with respondent and she was aware of the court date. The State confirmed it was not requesting a shelter care hearing. The court opened a contempt case for respondent and set a status hearing. A written continuance order stated respondent was to appear in person for the next court date or an arrest warrant would be issued. The order also stated, "The minors are not to be removed from the state of IL until further order of the court."

¶ 10 At a later hearing, the trial court noted respondent arrived after the conclusion of the April 7, 2023, hearing. Respondent was arraigned and given a copy of the order. A transcript of the arraignment is not included in the record on appeal.

¶ 11 The trial court held a status hearing on April 21, 2023. At the start of the hearing, respondent was not present. After a brief recess, respondent arrived for the hearing with La. P. and Li. P. The matter was continued.

¶ 12 On May 3, 2023, at a status hearing, the trial court noted the State was not moving forward on the motion to modify guardianship based on respondent's cooperation.

¶ 13 At a May 31, 2023, status hearing, respondent was not present, claiming her car broke down, and the parties agreed to continue the case. However, the State brought to the trial court's attention a new police report it had circulated to the parties that it found "very concerning."

¶ 14 A. Shelter Care Hearing

¶ 15 The shelter care hearing took place on June 14, 2023. At the beginning of the hearing, respondent was not present. The State asked the trial court to find respondent in contempt for not appearing and for violating the court's order by taking the minors to Georgia. Respondent arrived late to the hearing.

¶ 16 The State asked the trial court to take judicial notice of a Youth Services Bureau (YSB) concern report filed in April 2023, which detailed the two inadequate supervision incidents.

¶ 17 During the first incident, on January 27, 2023, respondent asked K.P. to watch La. P. and Li. P. while she slept after working a night shift. K.P. left to go to a friend's house, and La. P. followed K.P. outside. La. P. was found wandering the neighborhood. Respondent

was counseled on choosing appropriate caregivers, and respondent reported she had spoken with a childcare provider and ordered childproof locks to prevent La. P. from going outside.

¶ 18 The second incident took place on February 6, 2023. During that incident, a neighbor called the police after finding La. P. wandering outside alone again. The neighbor stayed with La. P. and Li. P., who was in the house alone. Respondent returned and explained she had asked K.P. to stay with the children while she ran errands and she would drive him to school afterwards. K.P. instead left to get on the school bus.

¶ 19 The trial court also took judicial notice of the YSB report filed on June 9, 2023. Because respondent was no longer willing to allow the caseworker into her home, the caseworker's supervisor was conducting weekly visits. In the report, the caseworker stated respondent had asked for $300 for gas money to drive K.P. to Georgia for the summer. The supervisor explained to respondent the agency would not provide the money due to the court order prohibiting the minors from leaving the state. The supervisor reported receiving a text message from respondent at 1:04 a.m. on June 9, 2023. The message explained respondent had taken the children to Georgia to drop her sister off. K.P. refused to leave Georgia, and respondent called the police. K.P. threw a chair at respondent. K.P. told officers he wanted to stay in Georgia, and the officers let K.P. go to his father's house in Americus, Georgia. The supervisor received a call later that day from the Georgia Department of Juvenile Justice stating they had K.P. in custody.

¶ 20 The trial court also admitted three police reports at the State's request and without objection. Two of the reports related to the inadequate supervision incidents. The third report pertained to an incident involving K.P. The report explained, on May 20, 2023, officers were called to a house for a medical assist. The resident reported an unknown teenage male was lying

in her front yard and kept falling asleep. The teenager appeared intoxicated. When officers attempted to question him, he would fall asleep or was uncooperative. The teenager was transported to the hospital, where he was uncooperative with officers and hospital staff. Staff were able to obtain respondent's information from the teenager's cell phone. When respondent arrived, she identified the teenager as her son, K.P.

¶ 21 Respondent's counsel asked the trial court to take judicial notice of a YSB report from May 24, 2023. Counsel then called respondent to testify.

¶ 22 Respondent testified she had brought the youngest two children with her to court, but K.P. was in juvenile detention in Georgia. Respondent had spoken with a "church family member[ ]" about placement for the children and named Judy W., a licensed childcare provider, as her preferred placement. Respondent believed she was doing everything asked of her and was in compliance with what was required of her. As to her decision to travel, respondent explained that, after the last court date, she was under the impression the case was closing. She drove to Georgia because her sister had COVID-19 and could not fly back. Respondent explained she did not want to leave Illinois because she had clients for hair services. When they got to Georgia, K.P. refused to return to Illinois, saying he wanted to stay with his father in Georgia. Respondent explained she learned James did not have a job or permanent housing. After K.P. ended up in juvenile detention in Georgia, respondent was forced to remain in Georgia until his court hearing. She then returned to Illinois. Respondent stated, "[K.P.'s] circumstance[s]—so his actions should not determine my kids being taken away from me 'cause [K.P.] didn't want to stay in Illinois anyway."

¶ 23 On cross-examination, the State asked respondent if she had been given four different court orders prohibiting her from taking the children out of state. Respondent initially

denied being given the orders, but she eventually agreed the first court order stated she should not take the children out of state. She could not recall any other orders saying not to remove the children from the state. Respondent insisted she had been told at the last hearing that the case was closing. She maintained she had not spoken to her attorney about the prior proceedings. She also stated she could not open any documents her attorney e-mailed to her.

¶ 24 On cross-examination by the GAL, respondent stated the supervisor from YSB told her the case was "closed out." No one informed her the case was still open. Respondent also explained, when they were in Georgia, K.P. "got out of control," which is why she called the police. K.P. was disrespectful and "threatened one of the officers," resulting in his detention, but he was released. The next day, K.P. refused to get in the car to go back to Illinois, and respondent again called the police. K.P. fled from the police, leading to his detention pending delinquency charges. Respondent described K.P.'s father as not stable, unemployed, and "a drunk."

¶ 25 The GAL proffered that during her last visit at respondent's residence, she "did not indicate that the case would be closing at the next court date either to the minor or to mother."

¶ 26 The trial court found there was an urgent and immediate necessity to remove K.P. from respondent's care, describing him as "a young man that appears to be out of control." Based on discussions with the caseworker that had occurred, the court agreed with a recommendation from DCFS, the State, and the GAL that K.P. be placed in the custody of James in Georgia.

¶ 27 As to La. P. and Li. P., the trial court stated, "I didn't hear any direct evidence of any harm to those children, but my concern is how mother—at some point the train went off the tracks." The court was most concerned with respondent's lack of cooperation, for example by

restricting YSB's access to the home and children, saying, "You don't get to say, 'I don't want this person in my house anymore,' unless you file a motion with the Court and explain your reasons in open court." The court therefore "reluctantly" found an urgent and immediate need to remove La. P. and Li. P. from respondent's care.

¶ 28 B. Adjudicatory and Dispositional Hearings

¶ 29 The adjudicatory hearing for Li. P. and dispositional hearing for all three minors took place on August 23, 2023. Respondent waived the adjudicatory hearing for Li. P. and stipulated to count II of the petition. The trial court proceeded to the dispositional hearing for La. P. and Li. P., while K.P.'s dispositional hearing was continued pending contact with James.

¶ 30 The State asked the trial court to take judicial notice of the April concern report, a family service plan filed August 15, 2023, and a YSB report filed August 16, 2023. The State presented the two police reports from the inadequate supervision incidents without objection and two indicated packets related to the inadequate supervision incidents over respondent's objection. The State also presented the police report from the intoxication incident with K.P. without objection. Finally, the State asked the court to take judicial notice of the shelter care hearing.

¶ 31 Evanya Perry-Burks testified for respondent that she had been the permanency caseworker for around four to six weeks. Perry-Burks stated respondent had been cooperative. However, the integrated assessment was not finished, and Perry-Burks could not determine what services respondent would need to complete until she consulted with her supervisor. Perry-Burks was concerned respondent took the minors out of state against a court order. She was also concerned respondent was not candid during the integrated assessment. Specifically, Perry-Burks noted that when she asked respondent what occurred during the intact case, respondent did not

mention the inadequate supervision incidents. On cross-examination, Perry-Burks clarified she asked respondent about all prior DCFS involvement and any police contacts with respondent and the minors. Respondent omitted the inadequate supervision incidents. Perry-Burks stated, when she received the case, the prior intact caseworkers expressed concern over respondent's lack of cooperation and history of being "hostile and verbally aggressive" with caseworkers. However, respondent had been cooperative with Perry-Burks. She asked respondent about her employment and housing during the integrated assessment interview, but she had not yet received a copy of respondent's lease as requested. Respondent was self-initiating individual counseling and willing to sign releases.

¶ 32 When respondent testified, respondent's counsel entered into evidence a copy of respondent's lease. Respondent's counsel also provided Perry-Burks with a copy of the lease. Respondent testified she worked at the airport and had ties to the Rockford area. Respondent explained she was honest during her interview for the integrated assessment, did not intend to conceal anything, and answered the questions asked of her. She had been cooperating with the agency, completed domestic violence and counseling classes, and started weekly personal counseling. She had no plans to move to Georgia. Respondent explained her sister had an issue with the prior caseworker, but since her sister returned to Georgia, working with the agency had been "[p]eaceful."

¶ 33 The trial court, with the agreement of the parties, continued the cases for disposition until the completion of the integrated assessment.

¶ 34 The hearing continued on September 18, 2023. The trial court first noted K.P. was in the custody of James in Georgia, had a good relationship with his father and paternal grandmother, and was attending school. The court discussed the details of the inadequate

supervision incidents, stating if the first incident were "the only incident, I don't think we'd be here." However, the court noted, "after specifically telling the [DCFS] investigator that, no, [K.P.]'s not gonna be in charge anymore, she left him in charge and he did it again—this time with notice. And that's what causes the Court some concern. So I do believe that there is a parenting issue." The court also found the incident where K.P. was found intoxicated on someone's lawn as "problematic." The court continued:

> "The Court must find unfitness, unwillingness or unable. We don't have unwillingness here, obviously. And [the intoxication incident evidence] really goes to inability. It appears that, at least while under [respondent's] parentage, I guess you'd say, under her authority, that there was just an inability to manage [K.P.]; and that was the problem.
>
> So I do find, based on that evidence, that there is a parenting issue. I find that [respondent] is, for now, unfit, unwilling or unable. Clearly, we know she's willing."

The court made all three minors wards of the court, and it placed guardianship and custody of K.P. with his father and guardianship of La. P. and Li. P. with the guardianship administrator of DCFS.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 Appellate counsel moves to withdraw on the basis no meritorious argument can be raised on appeal.

¶ 38 As an initial matter, we must address the timeliness of this disposition. This case has been designated as accelerated pursuant to Illinois Supreme Court Rule 311 (eff. July 1,

2018). Rule 311(a)(5) states, in relevant part, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Here, respondent filed her notice of appeal on October 5, 2023, making the deadline for our decision March 4, 2024. This court has made every effort to abide by that deadline. Due to unavoidable delays in the consideration of this case, however, we find there is good cause for issuing our decision beyond the deadline.

¶ 39 The procedure for appellate counsel to withdraw set forth in *Anders* applies to proceedings under the Juvenile Court Act. See *In re J.P.*, 2016 IL App (1st) 161518, ¶ 8 (holding *Anders* is the correct procedure where counsel seeks to withdraw from orders affecting parental rights under the Juvenile Court Act). Under this procedure, counsel's request to withdraw must " 'be accompanied by a brief referring to anything in the record that might arguably support the appeal.' " *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000) (quoting *Anders*, 386 U.S. at 744). Counsel must "(a) sketch the argument in support of the issues that could conceivably be raised on appeal, and then (b) explain why he believes the arguments are frivolous." *Id.* Counsel must then conclude the case presents no viable grounds for appeal. *Id.*

¶ 40 In this case, counsel asserts he has reviewed the record on appeal and concluded "an appeal in this case would be frivolous." We agree, grant counsel's motion to withdraw, and affirm the trial court's judgment.

¶ 41 The Juvenile Court Act provides a two-step process the trial court must follow in deciding whether a minor child should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18; see 705 ILCS 405/2-18(1), 2-22(1) (West 2022). The first step in the process is the adjudicatory hearing, where the court considers only whether the child is abused, neglected, or

dependent. See 705 ILCS 405/2-18(1) (West 2022). In this case, respondent stipulated to the adjudication of neglect for Li. P.

¶ 42 Following an adjudication of neglect, the trial court must conduct a dispositional hearing to determine if the minor should be made a ward of the court. 705 ILCS 405/2-22(1) (West 2022). Dispositional orders are subject to modification, consistent with section 2-28 of the Juvenile Court Act (*id.* § 2-28), until the case is closed or discharged. *Id.* § 2-23(2). In considering the appropriateness of wardship, the court must decide if the parent is unfit, unable, or unwilling, for reasons other than financial reasons alone, to care for, protect, train, or discipline the child, and that the health, safety, and best interest of the child will be jeopardized if the child remains in the parent's custody. *Id.* § 2-27(1). We will not overturn the court's dispositional order unless it is against the manifest weight of the evidence. *In re Jennifer W.*, 2014 IL App (1st) 140984, ¶ 44. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.P.*, 2012 IL 113875, ¶ 17. We give deference to the court's findings of fact because the court "is in the best position to observe the conduct and demeanor of the parties and the witness and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002).

¶ 43 Here, in the case of K.P., the State presented evidence of the intoxication incident and his behavior leading to his arrest in Georgia. It is clear from the evidence presented by the State that K.P. was out of control and could not be managed by respondent. K.P.'s acting out was so severe in Georgia respondent felt it was justified to call the police to help manage her son. The Juvenile Court Act requires a trial court to consider if the parent is unfit, unable, *or* unwilling, for reasons other than financial reasons alone, to care for, protect, train, or discipline the child. 705 ILCS 405/2-27(1) (West 2022). A finding on any one ground—unfit, unable, or

unwilling—is sufficient basis for the trial court to consider removal of a minor. *In re Lakita B.*, 297 Ill. App. 3d 985, 992-93 (1998). As stated by the trial court, respondent was certainly willing to care for, protect, train, or discipline her children, but in the case of K.P., the evidence demonstrated respondent was simply unable to manage him. Any argument the dispositional order as it pertained to K.P. was against the manifest weight of the evidence would be frivolous.

¶ 44 As to La. P. and Li. P., the State presented evidence of the two inadequate supervision incidents. After the first incident where La. P. was found wandering the neighborhood, respondent told the DCFS investigator she would "not allow this to ever happen again." Respondent was coached on available childcare and made plans to secure the doors so La. P. could not leave the house on her own. Yet nine days later, respondent again left the younger children under K.P.'s supervision, and again La. P. was found wandering alone outside the house while Li. P. was alone inside the house. In the words of the trial court, respondent had "notice" of the problem of allowing K.P. to supervise his younger siblings. Respondent had "notice" of alternative childcare options to contact. That the events were allowed to repeat was evidence of a "parenting issue." The court reasonably determined the safety of La. P. and Li. P. was at issue until respondent could receive services to assure the event could not repeat a third time. Any argument that the court's determination was against the manifest weight of the evidence would be frivolous.

¶ 45 In closing, we note in her response to counsel's motion to withdraw, respondent expresses her willingness to care for the minors. There is no doubt, as the trial court acknowledged in its decision, that respondent is a willing parent. However, a parent's willingness is only one part of the consideration. See *Lakita B.*, 297 Ill. App. 3d at 992-93. The court properly considered the evidence presented and found respondent was unfit or unable to

parent the minors. We will not disturb that finding on appeal where no reasonable argument can be made it was against the manifest weight of the evidence.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we agree with appellate counsel that no meritorious argument 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.

¶ 48 Affirmed.