

Nos. 1-13-0923 and 1-13-0924
(consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| <i>In re</i> DAMARCO W. and DAMINICO G., MINORS |) | Appeal from |
| |) | the Circuit Court |
| (THE PEOPLE OF THE STATE OF ILLINOIS |) | of Cook County. |
| |) | |
| Petitioners-Appellees, |) | |
| |) | Nos. 07 JA 101 |
| v. |) | 06 JA 025 |
| |) | |
| |) | |
| IESHA W. and MARCO G., |) | Honorable |
| |) | Nicholas Geanopoulos, |
| Respondents-Appellants.) |) | Judge Presiding. |

JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

ORDER

- ¶ 1 *HELD*: Termination of mother's parental rights to her minor children affirmed where court's finding of unfitness and best interests determination were not against the manifest weight of the evidence. Termination of father's parental rights to the minor children affirmed, and his attorney granted leave to withdraw.
- ¶ 2 In this consolidated appeal, respondents Iesha W. (mother) and Marco G. (father) appeal

1-13-0923 and 1-13-0924 (Cons.)

from orders of the circuit court of Cook County terminating their parental rights to their minor children Daminico G. and Damarco W. Mother contends that the trial court's finding of unfitness was against the manifest weight of the evidence, and that the trial court erred in finding that it was in the best interests of the minors that her parental rights be terminated. The court-appointed attorney for father, meanwhile, has filed a motion for leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967). This court has jurisdiction over both appeals pursuant to Supreme Court Rules 301 and 303. The expedited procedures of Supreme Court Rule 311 apply. For the following reasons, we affirm and grant the motion of father's attorney for leave to withdraw as counsel.

¶ 3 The record shows, in relevant part, that on January 13, 2006, the State filed a petition for adjudication of wardship on behalf of Damarco W. alleging that he was neglected and abused. It then filed a petition for adjudication of wardship on behalf of Daminico G. for the same reasons on February 23, 2007. Both minors were found to be neglected in that their environment was injurious to their welfare. They were then adjudged wards of the court on the grounds that respondents were unable for some reason other than financial circumstances alone to care for, protect, train, or discipline them.

¶ 4 On September 13, 2011, the State filed motions to permanently terminate respondents' parental rights and to appoint a guardian with the right to consent to the minors' adoption. The motions alleged that respondents were unfit pursuant to sections 1(D)(b), (m), and (p) of the Adoption Act (Act) (750 ILCS 50/1(D)(b), (m), (p) (West 2010)), and that it was in the best interests of the minors that a guardian be appointed.

1-13-0923 and 1-13-0924 (Cons.)

¶ 5 In mother's appeal, the public guardian initially asks this court to strike her brief and dismiss her appeal because of her numerous violations of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). We note that "[w]here an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal." *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). "However, Supreme Court Rule 341 is an admonishment to the parties, not a limitation on the jurisdiction of the reviewing court, and the reviewing court has discretion in order to reach a just result." *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 17.

¶ 6 Here, we agree that mother's brief fails to comply with the supreme court rules governing appellate court briefs. Her statement of facts contains only sporadic citations to the record in violation of Illinois Supreme Court Rule 341(h)(6), and the appendix to her brief does not contain the required table of contents of the record in violation of Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005). The entire brief also suffers from a lack of logical organization and coherent legal analysis. See *McCarthy v. Denkovski*, 301 Ill. App. 3d 69, 75 (1998) (" 'A reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived.' ") (quoting *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991)). Given the nature of the case, however, we choose to address the merits of mother's appeal.

¶ 7 At a fitness hearing on February 20, 2013, the State called Dr. Michael Igaravidez as an expert in the field of clinical psychology. Dr. Igaravidez testified that he was asked to perform a "Ground P" evaluation of mother in January 2012, which involves answering three questions: (1) whether mother had a mental impairment, mental illness, mental retardation, or developmental

1-13-0923 and 1-13-0924 (Cons.)

disability; (2) if so, whether any of those conditions caused her to be unable to discharge her parental responsibilities; and (3) if so, whether her inability to discharge her parental responsibilities would extend beyond a reasonable period of time. To answer these questions, he gathered records about the family's history, interviewed mother four times, observed her on one occasion with the children, and conducted collateral interviews with the DCFS caseworker, mother's therapist, and the children's therapist. He also conducted psychological testing of mother and reviewed a number of documents, including court records, DCFS records, and mother's mental health treatment records.

¶ 8 Dr. Igaravidez testified that based on mother's history, his interviews, and his work on the case, mother suffers from borderline personality disorder and borderline intellectual functioning. With respect to borderline personality disorder, he testified that a person needs to meet at least five of nine different criteria to be diagnosed with that condition. Mother exhibited the following five: (1) frantic efforts to avoid real or imagined abandonment; (2) a history of unstable and intense relationships; (3) an unstable sense of self and self-identity; (4) overreactive moods; and (5) inappropriate levels of anger and sometimes inappropriate expression of anger. He testified that mother displayed a lot of anger and frustration when he spoke of DCFS' involvement in her case, and that she has difficulty accepting responsibility and blames others instead. She was also unwilling to identify that she has any mental illness and even spoke of wanting to sue previous mental health providers "because she felt they didn't know what they were talking about."

¶ 9 As for mother's borderline intellectual functioning, Dr. Igaravidez testified that his diagnosis was based on the previous results of IQ tests and psychological evaluations. He noted

1-13-0923 and 1-13-0924 (Cons.)

that mother's IQ scores ranged from 67 to 80, and that she had trouble with verbal reasoning.

¶ 10 Dr. Igaravidez concluded that mother is unable to discharge her parental responsibilities due to her mental illness. With respect to the pragmatic aspects of parenting, he noted that mother has not had a job since 2008, and has not had her own residence since 2007, when she lost Section 8 housing because of problems with her landlord and domestic violence. He opined that the emotional problems from her borderline personality disorder exacerbate her borderline intellectual functioning and make it more difficult for her to problem solve, use good judgment, and reason through things. For instance, when she was pregnant, she never sought out a medical card or medical care for herself and was even homeless on a few occasions when she could have stayed in a shelter. Dr. Igaravidez noted that part of discharging one's parental responsibilities is being able to function as an independent adult and take care of one's own needs. Mother, however, has been unable to do that since she first came to the attention of DCFS in 2002.

¶ 11 As for mother's ability to carry out the emotional and behavioral aspects of parenting, Dr. Igaravidez noted that despite being in therapy for a decade and completing four different parenting skills classes, mother has never been able to make the necessary progress in therapy or apply those parenting skills in the real world. He also noted that, according to the children's therapist, the children have some repressed hostility and anger toward mother and have also expressed ambivalence about her as their mother. He questioned how mother could meet the emotional needs of the children if she could not take care of her own emotional needs.

¶ 12 Dr. Igaravidez further concluded that the likely duration of mother's inability to discharge her parental responsibilities is beyond a reasonable period of time and into the foreseeable future.

1-13-0923 and 1-13-0924 (Cons.)

He noted that personality disorders are chronic and can be difficult to treat. He also noted that mother began receiving treatment in 2002, and that none of the four agencies she had been with indicated adequate progress in therapy. The first three closed out her case because of inconsistent attendance and failure to make progress, and when he spoke with her therapist at the most current agency, she had not heard from mother in the month of July and said mother was "stuck." She also said that mother told her that "she doesn't feel she can move forward."

¶ 13 On cross-examination by the public guardian, Dr. Igaravidez stated that individuals with borderline personality disorder are often described as unstable and that the condition is of long duration and pervasive. He believes mother's borderline personality disorder is of the same level and that it is therefore highly unlikely that she would make timely progress for the children.

¶ 14 Dr. Igaravidez further stated that the therapist for Damarco and Daminico has indicated that they are dealing with a lot of emotional issues themselves. He believes that they would be better served by a parent who can deal with their emotional needs.

¶ 15 On cross-examination by counsel for mother, Dr. Igaravidez stated that mother brought ice cream and water to the observation. He also stated that there is nothing in mother's history indicating that she has been physically aggressive towards the children, and that he believes mother loves her children. He noted that she may have become angry when talking about the fact that her children are in a home where they were allegedly sexually abused, and that she showed appropriate concern by suggesting that they needed to be in therapy due to the abuse.

¶ 16 Dawn Barnes testified that she was the DCFS caseworker assigned to mother's case from February 2004 to November 2007, and from March 2008 to sometime in 2010. She testified that

1-13-0923 and 1-13-0924 (Cons.)

in January 2009, mother was in need of individual therapy to address her mental health issues as well as a psychiatric assessment. Although mother was engaged in therapy from January 2009 until January or February 2010, she never successfully completed it. Barnes referred her for a psychiatric evaluation, but she never completed that either.

¶ 17 Barnes testified that she was present for an incident of domestic violence between mother and father while at the home of father's mother in April 2009. After she had spoken with the grandmother, she found father sitting on the living room couch and asked where she could find mother. There was really loud music playing at the time, and his sister was singing to it. Father said that mother was outside, then left the building and went across the street. Barnes found mother sitting on the front steps shaking and nodding with two to three bruises on her forehead. Mother told Barnes that father had head-butted and hit her, and that his sister had turned up the music so that Barnes could not hear him or her screams. Barnes took mother to the police station and, on the way there, mother described other incidents of domestic abuse. She told Barnes that father had set the dog on her and showed her bite marks on her arm. She also stated that father had tried to choke her and would hit her. When they got to the police station, however, mother decided not to make a police report because she did not want to get father in trouble. Based on this incident, domestic violence services were recommended for mother as part of her therapy, but she never completed these services.

¶ 18 From January 2009 until January or February 2010, mother had weekly visits with Damarco and Daminico and was "fairly consistent" with them. Barnes testified that mother's and father's visits were supposed to be separate after the incident in April 2009, but that mother

1-13-0923 and 1-13-0924 (Cons.)

continued to come with father to his visits. She had to talk to mother about this and explain that they did not want any violence to occur during the visits.

¶ 19 Barnes testified that she did not have regular contact with mother from January 2009 until she was taken off the case and was only in touch with her about once a month. During the phone calls, mother never requested additional services or new referrals. From January 2009 until January or February 2010, mother never completed any of the recommended services.

¶ 20 On cross-examination by counsel for mother, Barnes stated that mother engaged in some inappropriate conversations with the children during visits; however, she wanted to reunite with them and showed them affection. She also stated that mother was inconsistent in her attendance at therapy sessions, but that mother completed parenting classes at some point before 2009, as well as a psychological assessment in 2004.

¶ 21 Mayna Johnson testified that she was the case manager assigned to mother's case since February 2010. She testified that when she took over the case, mother was in need of individual counseling, parenting, and domestic violence. Mother was not initially engaged in individual therapy, but she referred her to an agency at mother's request. Mother began individual therapy in March 2010, but it ended in October 2010 because of her tardiness and failure to complete treatment goals. She was then referred to another agency in January 2011, and her therapy there was still ongoing. Mother had not successfully completed her therapy and constantly missed, or was late for, appointments. Johnson testified that while mother successfully completed parenting classes, individual therapy was the main service for reunification. She also testified that mother has had therapy through numerous agencies over the years, but has never successfully completed

1-13-0923 and 1-13-0924 (Cons.)

it.

¶ 22 Johnson testified that mother was currently visiting Damarco and Daminico monthly, down from the weekly visitation she had with them back in February 2010. She noted that mother and father were supposed to visit on alternating weeks because of domestic violence issues, but they continued to disregard that structure and show up for the visitations together. Johnson testified that she had spoken with mother to no avail. The agency has never recommended unsupervised visits with Damarco and Daminico because mother has not completed the necessary services.

¶ 23 Johnson testified that she has very infrequent contact with mother, who "really only calls to get her monthly bus card." She also testified that mother is not consistent in her visits with Damarco and Daminico and has no way of structuring the children. She stated that mother just holds the children instead of reading or playing a game, and that the children basically "just grab toys and play with the parents there." Johnson has spoken to the parents about this, but they have yet to structure their visits. She noted that for Halloween 2012, mother brought the kids bags of candy and some clothes that she got from the thrift store.

¶ 24 On cross-examination by counsel for mother, Johnson discussed a few incidents where mother and father called her on a weekend during an argument. She testified that this qualified as domestic violence because they were arguing in a domestic dispute and had a history of domestic violence. She also testified that a visit had to be terminated once because they got into an argument.

¶ 25 On redirect, Johnson described two voicemail messages she received from mother and

1-13-0923 and 1-13-0924 (Cons.)

father in the middle of the night. In the first, father called to tell her that mother was pregnant.

In the second, father stated that he wanted separate visits from mother because she was going to kill him and was crazy. Mother was yelling, cursing, and screaming during these calls.

¶ 26 The parties rested. After hearing argument, the trial court found mother unfit pursuant to ground (p) in that she is unable to discharge parental responsibilities due to mental illness. The court also found both parents unfit pursuant to ground (b) in that they failed to maintain a reasonable degree of interest, concern, or responsibility towards the children. Lastly, the court found both parents unfit pursuant to ground (m) in that they failed to make reasonable efforts to correct the conditions that were the basis for removal of the children from the home, and failed to make reasonable progress toward return home of the children within the nine-month time frames set out by the State.

¶ 27 Following the court's findings of unfitness, a best interests hearing ensued. Susan Turner testified that she was the DCFS caseworker assigned to Damarco and Daminico on September 3, 2010. Turner testified that both minors are in the same non-relative foster home, that Damarco has been there for all but five months of his life, and that it has been Daminico's only home. Her last home visit was on February 11, 2013, and the home was safe and appropriate at that time. There were no signs of abuse, neglect, or corporal punishment, and she had no unusual incident reports for the boys. Turner testified that Damarco and Daminico live in the foster home with two of their siblings and the foster parent's adult daughter. The foster parent has already adopted the other two siblings, and the home is pre-adoptive for Damarco and Daminico. They each share a room with one of their brothers, and everyone gets along well.

1-13-0923 and 1-13-0924 (Cons.)

¶ 28 Damarco is seven years old and has been in counseling since 2011. He is doing well in both therapy and school. However, he is impulsive, which is being addressed by his therapy. Daminico is six years old and also in therapy. He is doing well in school, but has someone working with him on his writing. Both minors interact well with the foster parent and call her "momma." She is very attentive to them, and if they have questions, she will stop and answer them. They love each other and are affectionate, and the foster parent takes them to different events and family gatherings. They also have sibling visits with the siblings that do not live in the home.

¶ 29 It is the opinion of the agency that it is in the best interests of Damarco and Daminico to terminate parental rights considering the length of time they have been in the foster home, that they are doing well in the home, their strong relationship with the foster parent, and their desire to be in the home. The agency has no concerns about the foster parent's ability to care for the boys long-term, or to follow up with any special needs they may have.

¶ 30 After Turner's testimony, the parties rested. The court then determined that it was in the best interests of the minors that respondents' parental rights be terminated, and that a guardian be appointed with the right to consent to the minors' adoption. These appeals followed.

¶ 31 The involuntary termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, there must be a showing by clear and convincing evidence that the parent is unfit pursuant to section 1(D) of the Act. *In re C.W.*, 199 Ill. 2d at 210. Secondly, if there is a finding of unfitness, the court must determine whether it is in the best interests of the child that parental rights be terminated. *In re C.W.*, 199 Ill. 2d at 210. "A trial court's

1-13-0923 and 1-13-0924 (Cons.)

determination of parental rights involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008), quoting *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). Therefore, we will not reverse a finding of unfitness unless it is against the manifest weight of the evidence, *i.e.*, the opposite conclusion is clearly evident. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). "A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act." *In re Konstantinos H.*, 387 Ill. App. 3d at 203-04.

¶ 32 In this case, the trial court found mother unfit on several grounds, including under section 1(D)(b) of the Act. To find a parent unfit under that section, the trial court must find clear and convincing evidence that she failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2010); *In re Konstantinos H.*, 387 Ill. App. 3d at 204. "Because this language is in the disjunctive, any of these three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare." (Emphasis in original.) *In re Konstantinos H.*, 387 Ill. App. 3d at 204. The trial court must focus on a parent's reasonable efforts rather than her success and consider any circumstances that may have made it difficult for her to visit, communicate with, or otherwise show interest in her children. *In re Konstantinos H.*, 387 Ill. App. 3d at 204. "Noncompliance with an imposed service plan and infrequent or irregular visitation with the child may be sufficient to warrant a finding of unfitness under section (b)." *In re Konstantinos H.*, 387 Ill. App. 3d at 204.

¶ 33 Here, we find that the evidence at the fitness hearing established that mother has failed to

1-13-0923 and 1-13-0924 (Cons.)

maintain a reasonable degree of responsibility as to the children's welfare. The record shows that the primary service mother needed to complete in order to be reunified with her children was individual therapy. Although she has had numerous opportunities over the years to complete her therapy, she has never successfully done so because of inconsistent attendance and a failure to make progress. Her caseworker, Mayna Johnson, testified at the fitness hearing that mother's therapy was still ongoing and that she constantly missed, or was late for, appointments. Johnson further testified that mother was inconsistent in her visits with the children. Moreover, when she did visit, she completely disregarded instructions to do so separate from father due to their history of domestic violence. Mother also maintained infrequent contact with her caseworkers, and, according to Johnson, she "really only calls to get her monthly bus card." Given the paucity of argument by mother, we cannot say that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 34 We next address the trial court's determination that it was in the best interests of the minors to terminate mother's parental rights pursuant to section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2012)). *In re Deandre D.*, 405 Ill. App. 3d at 953. It is the State's burden to prove by a preponderance of the evidence that termination of parental rights is in a child's best interests. *In re Deandre D.*, 405 Ill. App. 3d at 953. The court's determination will not be reversed unless it is against the manifest weight of the evidence or the trial court has abused its discretion. *In re Deandre D.*, 405 Ill. App. 3d at 953. " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *In re Deandre D.*, 405 Ill. App. 3d at 953, quoting *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

1-13-0923 and 1-13-0924 (Cons.)

¶ 35 Here, the record shows that both minors reside in the same foster home along with two of their siblings, and that everyone gets along well. Damarco has lived there for all but five months of his life, and it has been Daminico's only home. They interact well with the foster parent whom they call "momma," and she is very attentive to them, shows them affection, and takes them to different events and family gatherings. They also have sibling visits with the siblings that do not live in the home. Both minors have expressed their desire to be in the home, and the home is pre-adoptive for them. Under the circumstances, we cannot say that the trial court's determination that it was in the best interests of the minors to terminate mother's parental rights was against the manifest weight of the evidence. We therefore affirm the order of the circuit court of Cook County terminating mother's parental rights to the minor children.

¶ 36 Turning to father's appeal, father's court-appointed attorney has filed a motion in this court requesting leave to withdraw based on her conclusion that there are no meritorious issues for appeal. The motion was made pursuant to *Anders v. California*, 386 U.S. 738 (1967), and is accompanied by a brief. Copies of the brief and motion were sent to the father, and he was advised of his opportunity to respond. He has not done so.

¶ 37 In accordance with the mandate of the *Anders* decision, we have carefully reviewed the record in this case, as well as counsel's brief, and have found no issues of arguable merit to be asserted on appeal. Accordingly, we grant counsel's motion for leave to withdraw, and affirm the judgment of the circuit court of Cook County as to respondent Marco G.

¶ 38 Appeal No. 1-13-0923, affirmed.

¶ 39 Appeal No. 1-13-0924, affirmed.

1-13-0923 and 1-13-0924 (Cons.)