2024 IL App (4th) 231394-U

NO. 4-23-1394

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 28, 2024
Carla Bender
4th District Appellate
Court, IL

In re K.Q., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	No. 20JA432
v.	)	
Nia H.,	)	Honorable
Respondent-Appellant).	)	Derek G. Asbury,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel's motion to withdraw because no meritorious issues could be raised on appeal.

¶ 2 On November 6, 2023, the trial court entered an order terminating the parental rights of respondent, Nia H., as to her minor child, K.Q. (born in 2019). Respondent appealed, and counsel was appointed to represent her. Appellate counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), on the basis that she cannot raise any potentially meritorious arguments on appeal. After reviewing the record and counsel's memorandum, we grant the motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Procedural History

¶ 5 On September 4, 2020, the State filed a petition seeking to adjudicate K.Q. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2020)). It alleged K.Q. was neglected based on an injurious environment because respondent (1) was unable to secure stable housing for herself and K.Q., (2) had left K.Q. alone in their residence, (3) had left K.Q. alone outside the residence when no adults were at the residence, and (4) had been "involved in a domestic altercation" with her paramour, K.Q.'s father, Cedric Q., that resulted in injuries to both parties but nevertheless remained in the relationship. (Cedric Q. is not a party to this appeal.) On November 6, 2020, respondent stipulated to the petition's allegations. The trial court adjudicated K.Q. neglected and made him a ward of the court and continued his guardianship and custody with the Illinois Department of Children and Family Services (DCFS).

¶ 6 B. The Petition for Termination of Parental Rights

¶ 7 On November 16, 2022, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent was an unfit parent within the meaning of the Adoption Act due to her to failure make reasonable progress toward the return of K.Q. during the nine-month period of December 9, 2021, to September 9, 2022. See 750 ILCS 50/1(D)(m)(ii) (West 2022).

¶ 8 C. The Fitness Portion of the Termination Proceedings

¶ 9 The hearing on the fitness portion of the termination proceedings started on May 19, 2023. Respondent was present. The trial court said it would "consider pleadings [and] the court orders," but it would consider any findings made under a lower standard of proof only to the extent that they established a "benchmark for services."

¶ 10 1. *The State's Evidence*

¶ 11 The State asked the trial court to admit records of respondent's drug testing. After counsel for respondent requested the records be limited to the nine-month period at issue, the court

admitted those records without objection. The State also successfully moved for the admission of (1) respondent's counselling records from (a) FamilyCore, (b) the Antioch Group, (c) Children's Home, a homeless youth services program, and (d) Good Beginning Program; (2) respondent's drug drop records from Help At Home; and (3) certified copies of respondent's criminal convictions. Respondent had been convicted of, *inter alia*, burglary and felony retail theft.

¶ 12 Katie Hite, a DCFS caseworker, testified she was assigned to the case in March 2021. She was aware of respondent's record of not completing services, missing drug tests, and not completing counseling with one agency because she missed appointments or arrived late. She attended some counseling sessions that were intended to be weekly until she was incarcerated. The counselor reported respondent was making little progress. Respondent received some services, including parenting coaching, because she was a "youth in care." She missed some services because she was incarcerated for two months. Respondent had been arrested three times during the nine-month period.

¶ 13 Respondent was "appropriate" with K.Q. during a visit Hite supervised. She regularly had jobs but was hurt at one. She had an appropriate home. A primary barrier to respondent's progress had been her incarceration. However, even outside that period, she was not "engaging completely."

¶ 14 2. *Respondent's Evidence*

¶ 15 Respondent, who appeared while in custody, testified she had been cooperative with DCFS. She had maintained employment but had had three or four jobs during the relevant period. Her housing had been stable. She had visited K.Q. weekly. He enjoyed the visits and called her "Mommy." The visits were cut short only when he wanted to go home.

¶ 16 Respondent had previously been incarcerated after missing a court date on a retail

theft charge. She said she had not needed money but had the wrong friends and wanted to fit in. Her felony conviction resulted in the services she received to find housing not being useful. Her conviction barred her from subsidized housing. She was nevertheless eventually able to find housing.

¶ 17 Respondent said she missed three of her counseling sessions at the first agency because of work and canceled twice, also because of work.

¶ 18 3. *The Trial Court's Finding of Unfitness*

¶ 19 The trial court deemed respondent unfit. It noted the standards for reasonable progress set out by this court and our supreme court. It noted it had reviewed all the exhibits before making its findings. Further, it had not considered a report of respondent's visits that had accidentally been included with the exhibits. She had jobs and lost them, got arrested, and was discharged from her services. She lost her housing. The court noted, "[I]t was like starting all over."

¶ 20 The trial court acknowledged respondent had participated in some services and had participated in drug testing without testing positive for any prohibited substance. However, her life had been "the exact opposite of *** stable." It noted respondent's arrest for retail theft occurred while she had a good job but was "hanging out with the wrong people." It noted, in the relevant period, respondent had "picked up three or four new cases that were misdemeanors and felons [*sic*] that spanned two different counties." The court said respondent's incarceration during the relevant period was inconsistent with K.Q. being returned to her in the near future.

¶ 21 D. The Best-Interest Portion of the Termination Proceedings

¶ 22 1. *Evidence*

¶ 23 The State recalled Hite to testify at the best-interest portion of the termination

proceeding. She said K.Q. had been in his placement since January 14, 2023, but prior to his placement, the foster mother had provided respite care for him three times. K.Q. was the only person living with his foster parent, Cheryl W. However, her grandchildren were frequent visitors. He was well cared for in the placement. He had "behavior issues" in his previous placement, but his "behavior ha[d] improved greatly" in the new placement. Hite believed that Cheryl W.'s warmth and skill with K.Q. were the reasons for his improvement. She wanted to adopt K.Q. Hite believed K.Q. had a bond with respondent.

¶ 24 Jenise Jackson, who became K.Q.'s caseworker after July 2023, testified she visited K.Q. in his placement three times a month. She believed his caregiver was very nurturing and attentive to his needs. K.Q. had received a diagnosis of attention-deficit/hyperactivity disorder. Cheryl W. took him to therapy sessions. K.Q., who was four years old at the time of the hearing, had not expressed any preferences about where he lived. Respondent had limited contact with Jackson, only contacting her once about K.Q.'s welfare.

¶ 25 Although Cheryl W. was 64 years old when the hearing occurred, Jackson had no concern about her age. Jackson acknowledged a policy existed regarding the requirement that older adopters demonstrate their medical fitness, but she was unsure of the age at which that requirement started to apply. Cheryl W.'s home was a "licensed specialized home."

¶ 26 Respondent testified she believed K.Q. had a better connection with her than Cheryl W. She had not reached out to Jackson because she did not receive notification of the case administration's transfer from DCFS to an agency until August 2023. She could provide a home for K.Q. with herself and her mother. She stated that neither DCFS nor Camelot Care, the agency that took over the case administration, had been clear about explaining the services in which they expected her to participate. She had trouble obtaining information from either agency. For

instance, she had inquired about attending K.Q.'s appointments with his doctor, but she never received the information.

¶ 27 2. *Argument*

¶ 28 The State argued K.Q.'s placement was "good," stable, caring, and loving. It met K.Q.'s basic needs.

¶ 29 The guardian *ad litem* expressed concerns about moving too soon to termination as opposed to guardianship at that time. She suggested that too much had happened too recently—the change in caregivers and the change in case administration from DCFS to Camelot Care—to make a permanency decision. She acknowledged that neither parent was ready for K.Q. to return home, but she suggested that guardianship might be more appropriate than adoption. She was also concerned that a legal screening of Cheryl W. had not been completed.

¶ 30 The trial court recognized respondent's request to speak during the argument, but, rather than letting her speak, it admitted letters she had written to the court.

¶ 31 3. *The Trial Court's Best-Interest Ruling*

¶ 32 On the hearing date, the trial court addressed respondent, explaining that, regardless of the potential validity of her complaints about how the case ought to have been handled, the best-interest proceeding addressed what was best for K.Q. at the time of the hearing. It said K.Q. had been thriving in Cheryl W.'s care for the last eight months. It postponed its ruling to learn whether Cheryl W. had been told guardianship was an option and to have questions about legal screening addressed.

¶ 33 On the next court date, the trial court allowed evidence relating to Cheryl W.'s preferences. She told the court she wanted to adopt K.Q. rather than be his guardian because "he would be more family." Jason Spence, from "DCFS legal," explained DCFS would work with

Cheryl W. to ensure continuity of care for K.Q. in case her health prevented her from caring for him. Spence said this was common practice with adoptive parents of all ages.

¶ 34 The trial court found adoption by Cheryl W. to be in K.Q.'s best interest. It stated it had considered all statutory best-interest factors. It found, because K.Q. had been placed with Cheryl W. for 10 months and she had provided respite care for him prior to his placement with her, K.Q. remaining permanently with her gave him the greatest continuity of care. Further, K.Q.'s developmental delays and behavioral problems had become far less notable during the placement.

¶ 35 The trial court terminated the parental rights of respondent and Cedric Q. and advised them of their appeal rights. This appeal by respondent followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, appellate counsel seeks to withdraw on the basis that she cannot raise any arguments of potential merit.

¶ 38 The procedure for appellate counsel to withdraw set forth in *Anders* applies to findings of parental unfitness and termination of parental rights. *In re S.M.*, 314 Ill. App. 3d 682, 685, 732 N.E.2d 140, 143 (2000). According to 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." *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." *S.M.*, 314 Ill. App. 3d at 685. Counsel must then conclude the case presents no viable grounds for appeal. *Id.* In doing so, counsel should review both the unfitness finding and the best-interest determination and indicate in the brief that she has done so. *Id*. at 685-86.

¶ 39 Here, counsel states she has reviewed the record on appeal, and her motion demonstrates she has reviewed the report of the termination proceeding. The record indicates

counsel sent a copy of her motion and accompanying memorandum of law to respondent by mail. Respondent has not filed a response. Counsel identifies two possible issues for review: (1) whether respondent's participation in some services arguably made the trial court's unfitness determination contrary to the manifest weight of the evidence and (2) whether it was arguably contrary to K.Q.'s best interest to be adopted by a 64-year-old. Appellate counsel has explained, with argument and citation to authority, why she deems each of these issues lacks merit. We address each argument in turn and ultimately agree with counsel's conclusion there are no issues of arguable merit to be raised on appeal.

¶ 40 A. Unfitness Finding

¶ 41 1. *Applicable Law*

¶ 42 A determination of parental unfitness involves factual findings and credibility determinations that the trial court is in the best position to make because "the trial court's opportunity to view and evaluate the parties *** is superior." (Internal quotation marks omitted.) *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69. "A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence." *In re Ta. T.*, 2021 IL App (4th) 200658, ¶ 48, 187 N.E.3d 763. "A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." (Internal quotation marks omitted.) *In re N.B.*, 2019 IL App (2d) 180797, ¶ 30, 125 N.E.3d 444.

¶ 43 The State must prove unfitness as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)) by clear and convincing evidence. *In re N.G.*, 2018 IL 121939, ¶ 28, 115 N.E.3d 102. Section 1(D)(m)(ii) of the Adoption Act defines an unfit person as a parent who fails to make "reasonable progress toward the return of the child" during any nine-month period

following an adjudication of neglect or abuse. 750 ILCS 50/1(D)(m)(ii) (West 2022). The Illinois Supreme Court has held that

> "[t]he benchmark for measuring a parent's reasonable progress under section 1(D)(m) of the Adoption Act encompasses compliance with the service plans and court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known that would prevent the court from returning custody of the child to the parent." *In re K.P.*, 2020 IL App (3d) 190709, ¶ 36, 157 N.E.3d 493 (citing *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001)).

Similarly, this court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 44 2. *This Case*

¶ 45 Counsel contends an argument that respondent made reasonable progress because she participated in some services would be frivolous. We agree. The trial court reasonably focused on respondent's repeated arrests and incarcerations in finding her unfit. It would be frivolous to

argue a parent who is unable to avoid criminal activity resulting in repeated arrests could, in the near future, have custody of their child returned to them.

¶ 46 B. Best-Interest Determination

¶ 47 1. *Applicable Law*

¶ 48 At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re C.P.*, 2019 IL App (4th) 190420, ¶ 71, 145 N.E.3d 605. In reaching a best-interest determination, the trial court must consider, within the context of the child's age and developmental needs, the following factors, which are derived from section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)):

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." (Internal quotation marks omitted.) *In re J.B.*, 2019 IL App (4th) 190537, ¶ 32, 147 N.E.3d 953; see 705 ILCS 405/1-3(4.05) (West 2020).

¶ 49 In contrast to fitness hearings, at which the Illinois Rules of Evidence apply, "at the best interest portion of the termination hearing *** the trial court may consider 'all evidence helpful *** in determining the questions before the court *** even though that evidence would not

be admissible in a hearing where the formal rules of evidence applied.' " *In re M.D.*, 2022 IL App (4th) 210288, ¶ 76, 193 N.E.3d 933 (quoting *In re Jay. H.*, 395 Ill. App. 3d 1063, 1070, 918 N.E.2d 284, 289 (2009)).

¶ 50 A reviewing court affords great deference to a trial court's best-interest finding because the court is in a superior position to view the witnesses and judge their credibility. *C.P.*, 2019 IL App (4th) 190420, ¶ 71. An appellate court "will not disturb the trial court's decision regarding a child's best interests *** unless it is against the manifest weight of the evidence." *Id.* ¶ 68. A best-interest determination is against the manifest weight of the evidence only when the opposite conclusion is clearly the proper result. *Id.*

¶ 51 2. *This Case*

¶ 52 Appellate counsel has considered whether, because Cheryl W. was in her mid-60s, counsel could argue on appeal the trial court's best-interest determination was contrary to the manifest weight of the evidence. She concludes such an argument would be frivolous. We agree.

¶ 53 As appellate counsel notes, the trial court took great care "to have the agency address the viability of guardianship versus adoption with the foster parent." Cheryl W. was unambiguous in her statement that she wanted K.Q. to be family. Further, the court's conclusion K.Q. had flourished in his placement with Cheryl W. (in contrast to his previous home environments) was supported by the evidence. Hite testified K.Q.'s behavioral problems and developmental delays largely resolved after he came into Cheryl W.'s care. It would thus be frivolous to argue "the opposite conclusion [from that reached by the court] is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." (Internal quotation marks omitted.) *N.B.*, 2019 IL App (2d) 180797, ¶ 30.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 56 Affirmed.