2022 IL App (2d) 220079-U
No. 2-22-0079
Order filed June 27, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.L.,	)	Appeal from the Circuit Court
	)	of Kane County.
A minor.	)	
	)	
	)	No. 20-JA-146
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Edward L.	)	Kathryn Karayannis,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Father's attorney granted leave to withdraw where counsel demonstrated that there was no nonfrivolous issue to raise on appeal.

¶ 2 Respondent, Edward L., appeals the trial court's rulings that he was unfit and that the termination of his parental rights was in the best interests of his son, J.L. Edward's appointed appellate counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), which asserted that there are no issues of arguable merit to be raised on Edward's behalf. Although counsel's accompanying memorandum of law could be more fulsome, we agree with counsel that there is no issue of arguable merit that

could be raised on Edward's behalf. Accordingly, we grant the motion to withdraw, and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 J.L. is the biological child of Laura W. and Edward L. This appeal concerns only Edward's rights over J.L.

¶ 5 In September 2019 the State filed a neglect petition in McHenry County concerning J.L., who was then nearly five years old. Prior to the filing of the petition, the Department of Children and Family Services (DCFS) had repeated involvement with Laura, Edward, and J.L. and a safety plan had previously been implemented. There is no dispute that Laura and Edward both violated the plan; they were physically abusive to each other, and Edward was allegedly abusive to J.L. In addition, both Laura and Edward were abusing prescribed drugs, illegal drugs such as cocaine, and alcohol. The record shows Laura and Edward had over two dozen separate contacts with both DCFS and law enforcement during J.L.'s young life. Edward was subject to orders of protection for Laura and J.L. and was often under charges for violating those orders and domestic battery. Following yet another incident in September 2019, DCFS took protective custody of J.L.

¶ 6 Laura stipulated to shelter care and the trial court (Judge Christopher Harmon) found urgent and immediate necessity to remove J.L. from his parents' care. During this time, J.L. was placed with his maternal grandparents. At a status hearing in November 2019, J.L.'s grandparents indicated they could no longer care for him and he required a specialized foster home due to his autism.

¶ 7 In January 2020 Laura and Edward both stipulated to the injurious-environment allegation in the State's petition. J.L. was adjudicated neglected and made a ward of the court.

¶ 8 Due to the COVID-19 pandemic, the hearings were delayed with all parties' consent for some time. In addition, during this time, the minor's foster placement was moved to Kane County. In September 2020, the court found both parents were dispositionally unfit, set the minor's permanency goal to return home within 12 months, and ordered the case transferred to Kane County.

¶ 9 In Kane County, the trial court (Judge Kathryn Karyannis) admonished the parties and entered scheduling orders. At this time, Edward's service plan called for him to maintain employment and a home suitable for his son, attend domestic violence counseling for perpetrators, attend parenting classes, complete an updated substance abuse assessment, and comply with all requested drug and alcohol screens. In March 2021, the court held a permanency hearing, at which a caseworker testified that Edward was not in compliance with most of his service plan. He was unemployed, did not have stable housing (he had moved from Huntley, to Woodstock, to Chicago, to Lansing), completed one of seven drops (which came back positive for marijuana), had not attended domestic violence counseling, and although he had taken several parenting courses, he declined to consent to DCFS obtaining records of his progress. In addition, the caseworker testified that Edward frequently canceled visits without prior notice and failed to maintain contact with the caseworker. In addition, during one of Edward's supervised in-person visits with J.L., Edward largely attempted to get J.L. to play with his phone and to entertain himself, and often yelled at J.L. out of frustration.

¶ 10 Edward testified that he had a medical marijuana card (which he had lost possession of) and that his visits with J.L. were largely positive. He also stated that visits had been more consistent when the case was in McHenry County and that he had completed one session of parenting class and a substance abuse assessment, which he stated had been delayed because he previously did

not have a state-issued ID. On cross-examination, Edward stated that he had been homeless for the preceding five years and could only rely on public transportation. Edward further stated that he was disabled because he "got shot several times in '94" but declined to elaborate because "[his] medical [information] is actually confidential."

¶ 11 At a continued hearing date, with proceedings over Zoom, Edward's counsel attempted to admit documents allegedly indicating that Edward had attended several parenting-class sessions as well as scheduled intensive outpatient treatment. The trial court sustained the State's objection and refused to admit both sets of documents as they had never been shown to the caseworker or the other parties. Edward took it upon himself to object to the court's ruling and attempted to cut the judge off, leading to him being muted. The trial court then admonished Edward that if he had behaved that way in person, he would have been jailed for contempt.

¶ 12 At the close of the hearing, the trial court found that the appropriate permanency goal was substitute care pending the determination of parental rights. The court indicated that it found Edward's testimony incredible, and that he had not made reasonable efforts or progress. The court noted a GAL report indicated that Edward was inappropriate, even confrontational, with J.L. during supervised visits, and that aspect of Edward's personality had been on display several times in court. The court noted, too, Edward's testimony that he attempted to visit with J.L. when Edward was "available," as opposed to when the visits were scheduled. The court further found that Edward was evasive about where he had been living which prevented caseworkers from referring him for available local services, and Edward continued to place blame on caseworkers as well as the pandemic rather than his own behavior. The court determined that J.L. had significant needs, which Edward was either unable or unwilling to appreciate.

¶ 13 In July 2021 the State then filed a petition to terminate Edward's parental rights which alleged several grounds of unfitness. Specifically, the State alleged that Edward (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to J.L's welfare (750 ILCS 50/1(D)(b) (West 2020)); (2) failed to protect J.L. from conditions within his environment that were injurious to his welfare (*id.* § 1(D)(k)); (3) failed to make reasonable efforts to correct the conditions that were the basis for J.L's removal during the nine-month period following disposition (January 25, 2020 to October 25, 2020) (*id.* § 1(D)(m)(i)); and (4) failed to make reasonable progress towards J.L.'s return within the same nine-month period (*id.* § 1(D)(m)(ii)). The State's petition sought to terminate Edward's parental rights and to have DCFS's guardianship administrator appointed as J.L's guardian with the power to consent to his adoption.

¶ 14 A permanency hearing in August 2021 indicated that Edward had moved to Markham but had not notified the caseworker. Edward testified that he had obtained a parenting class certificate and had started counseling, but never followed up on any of the recommendations after his intake. The court noted the GAL's report that neither parent had been participating in regular visitation. The court maintained the goal at substitute care. During its ruling both parents became combative. The court muted Edward but noted that he still "appear[ed] to be screaming in the background." He then either lost his connection or disconnected himself from the proceedings. The court noted that Edward consistently had problems connecting with the proceedings and often had participated in the case while in public settings, which was inappropriate due to the sensitive nature of juvenile proceedings. The court ordered that Edward would need to personally appear at all future proceedings.

¶ 15 Edward declined to appear at the February 2022 trial but was represented by counsel. The court took judicial notice of several documents including Laura's orders of protection against Edward and certified copies of Edward's convictions for domestic battery.

¶ 16 The caseworker testified that Edward had missed several visits since the goal change, and the ones he attended did not go well. He did complete a parenting class outside of the nine-month period; however, he did not complete any other services or otherwise demonstrate any measurable progress. The caseworker noted that J.L. was unable to read and required assistance to go to the bathroom; however, Edward would not assist J.L. with this task unless directly prompted to do so by visitation supervisors. In addition, Edward had not attended any of J.L.'s doctor's appointments, or quarterly meetings with his teachers at a specialized school.

¶ 17 In its decision, the trial court noted that Edward and Laura's domestic violence clearly had an affect on their son, who was present for most of it. In addition, Edward failed to protect J.L. from Laura's "significant substance abuse and mental health issues." Further, Edward had not sent any gifts, letters, or other forms of support, and rarely communicated with J.L.'s caseworker or inquired about his son's welfare. Finally, the court noted that Edward still was unable or unwilling to appreciate his son's significant needs and was manifestly unsuited to address himself to the task of parenting a child with autism. The court found Edward unfit on all four grounds alleged in the State's petition.

¶ 18 At a best-interests hearing, the caseworker testified that J.L. had spent the last two-and-a-half years with a foster mother who has specialized training in Elgin, where he has one other foster sibling of similar age. J.L's foster mother was searching for a backup caregiver to provide additional assistance, but had no problem currently meeting J.L.'s needs. In addition, J.L.'s foster mother had encouraged visitation between J.L. and his maternal grandparents. The trial court

determined that it was in J.L.'s best interests to terminate Edward's parental rights. Edward timely appealed.

¶ 19 II. ANALYSIS

¶ 20 As noted, pursuant to *Anders* and *In re Alexa J.*, Edward's appellate attorney moves to withdraw as counsel. Counsel's motion states that she has thoroughly reviewed the record, researched the applicable statutes and case law, and concluded that there are no meritorious issues to be raised on appeal. Counsel supports her motion with a memorandum of law, which includes a statement of facts, and suggests several possible issues for discussion, and ultimately explains why this appeal presents no nonfrivolous issues. Counsel further states that she served Edward with a copy of the motion by certified mail at his last known address and informed him of the opportunity to present any additional matters to the court. We advised Edward that he had 30 days to respond to the motion. That time has passed, and he has not replied.

¶ 21 In accordance with *In re Alexa J.*, counsel has identified several potential issues based on her review of the record as well as her discussions with Edward. Counsel discusses the evidence in the record and explains why she believes these issues lack merit. As noted before, appellate counsel's memorandum of law could have been more fully developed; however, it is sufficient to permit our review. *Cf. In re Zy.D.*, 2021 IL App (2d) 200629, ¶¶ 7, 16. Having reviewed the record, we agree with counsel's contention that this appeal lacks arguable merit.

¶ 22 The Juvenile Court Act (705 ILCS 405/1 *et seq*. (West 2020)), provides a two-stage process for involuntary termination of parental rights. The trial court initially holds an unfitness hearing, during which the State must prove the parent is unfit, as defined in section 1(D) of the Adoption Act, by clear and convincing evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). If the court finds the parent to be unfit, the court then conducts a best interests hearing to determine, by

a preponderance of the evidence, whether it is in the best interests of the child to terminate the unfit parent's rights. *Id.*

¶ 23 We begin with Edward's claims as articulated by his counsel. Counsel stated that Edward felt the case was improperly transferred from McHenry County to Kane County and that the court in Kane County improperly relied upon events that occurred in McHenry County. There is, to put it mildly, no support for that assertion. In contrast to criminal cases, all juvenile courts in Illinois have jurisdiction over all juvenile cases under the Juvenile Court Act, regardless of where the underlying events occurred. See, *e.g.*, *In re Kelan W.*, 2021 IL App (5th) 210029, ¶ 13. The Act and the court's jurisdiction are broad precisely because juvenile courts serve the higher interest of safeguarding children's welfare. *Id.* (noting that a delinquency petition may be brought based on events or crimes occurring out of state).

¶ 24 Furthermore, as counsel correctly notes, the Act specifically grants juvenile courts the discretionary authority to transfer proceedings to the county wherein the child resides. See 705 ILCS 405/2-2(2) (West 2020). In this case, the circuit court in McHenry County stated its belief that the change in J.L.'s foster placement, as well as his overall level of need, indicated that the interests of justice would best be served by transferring his case to Kane County. That decision was unassailably correct. Moreover, we reject any suggestion that Kane County somehow had a lesser interest in J.L.'s parentage and permanency merely because the case began in McHenry County. As we held 55 years ago, a child-welfare proceeding may properly be heard in any county even if "the child had been within that county for only one day." *In re Bartha*, 87 Ill. App. 2d 263, 265 (1967).

¶ 25 Next, counsel suggests that Edward felt the trial court in Kane County was biased, "rude," and " 'against' him from the very beginning." There is no support for that assertion. The record

shows that the trial court sought to maintain decorum and civility commensurate with these sensitive child-welfare proceedings. Despite repeated admonishments, Edward would often appear from different public locations (such as public parks, and homes that were not his) where these proceedings easily could have been overheard. In fact, Edward's frequent outbursts practically assured that they would be. We find the trial judge's conduct and demeanor were appropriate and in sharp contrast to Edward's indecorous and inappropriate behavior. It was Edward, with his loud and often rude outbursts who failed to treat the court, as well as the State and the GAL, with due respect.

¶ 26 In light of the foregoing, we can find no error in the court making good on its admonishments and requiring Edward to appear in person for the proceedings on unfitness and best-interests. A parent has a statutory right under the Act to be present during these hearings, but a parent's presence is *not* mandatory. *In re J.S.*, 2018 IL App (2d) 180001, ¶ 19. Trial courts may conduct these hearings even though a parent is incarcerated or absent. *Id.* Furthermore, we note that Edward was represented by counsel at both hearings. His attorney answered ready for trial, indicated that he was unsure Edward wished to appear, and did not request a continuance. The report of proceedings demonstrate that Edward was "ably represented by counsel" (*In re M.R.*, 316 Ill. App. 3d 399, 401 (2000))—experienced counsel at that—who cross-examined the State's witnesses, introduced evidence, and made appropriate arguments on Edward's behalf.

¶ 27 Appellate counsel also indicates that Edward stated that he did sign in to the Zoom lobby for his unfitness hearing, but that the trial court judge "would not allow him to participate." There was no support for that statement in the record, and the trial court judge did consistently note whether parties or their attorneys were in the virtual lobby or waiting room. We also think it highly unlikely that Edward's trial counsel would fail to note Edward's presence in the lobby after counsel

did his level best to marshal any instance of Edward's involvement in this case against a finding of his unfitness. Nevertheless, any doubts which may arise from the incompleteness of the record will be resolved against the appellant, and we reject any suggestion that Edward attempted to appear *in court* for these proceedings. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 28 We note too that this was not a case like *In re C.J.*, 272 Ill. App. 3d 461 (1995), where the respondent mother wrote a letter to the court opposing termination, and requested a continuance due to her incarceration two months before the hearing to a specific date, or in the alternative, requested a hearing to continue the hearing at the end of the State's case so that she could review the transcripts and respond accordingly. *Id.* at 465. Here, Edward neither informed the court nor his attorney of a compelling reason as to why he could not be present, he again was represented by counsel, and "based upon the strength of the State's case, it is highly unlikely that [his] presence would have made any difference to the outcome." *In re J.M.*, 2020 IL App (2d) 190806, ¶ 42. We agree with counsel that this argument, too, would be meritless.

¶ 29 Finally, although appellate counsel does not raise the issue, we determine that it would be frivolous to challenge the court's unfitness and best-interests findings. We will reverse a trial court's unfitness or best-interests determination only if they are against the manifest weight of the evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶¶ 28, 34. A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 30 We first address unfitness. Section 1(D) of the Adoption Act provides various grounds under which a parent may be found unfit and, here, the trial court found Edward unfit on all four grounds alleged in the State's petition. We need not address all four counts as any one count,

properly proven, is sufficient to sustain a finding of parental unfitness. *In re D.C.*, 209 Ill. 2d 287, 296 (2004). However there is no basis to disturb any of the trial court's findings.

¶ 31 Edward did not maintain a reasonable degree of interest, concern, or responsibility: he minimally visited with J.L. even though more opportunities were available, he failed to seek counseling or comply with his service plan, failed to send any gifts or support, and voluntarily failed to appear for termination proceedings, even though he was given notice. These were all valid reasons for the court's finding. See *In re C.L.T.*, 302 Ill. App. 3d 770, 774-78 (1999). Furthermore, the record amply showed Edward's failure to make reasonable progress or efforts, both in the nine months following disposition as well as *any* time frame during the pendency of this case. That is, Edward's efforts were subjectively unreasonable, and his progress was objectively unreasonable, throughout this case. See *In re C.N.*, 196 Ill. 2d 181, 210-11 (2001). Last, we note that Edward also failed to protect J.L. from an injurious environment due to domestic abuse by failing to address Laura's substance abuse and mental illness as well as failing to attend services to address his own tendencies as a perpetrator of domestic violence. See *In re C.W.*, 199 Ill. 2d 198, 210-12 (2002). Thus, the record overwhelmingly showed Edward was unfit.

¶ 32 Finally, we determine that there were no potentially meritorious issues regarding the trial court's best-interests determination. At this stage, we are not so much concerned with the parent's past conduct. Instead, we focus on the children's welfare and whether the termination of a parent's rights will improve their future. See *In re D.M.*, 336 Ill. App. 3d 766, 771-72 (2002). At this point in the proceedings, a parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re M.C.*, 2018 IL App (4th) 180144, ¶ 34. "The issue is no longer whether parental rights can be terminated; the issue is whether, in light of the

child's needs, parental rights *should* be terminated." (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004).

¶ 33 Again, throughout this case, Edward failed to develop or maintain a reasonable parental relationship with his son. Like the trial court, we note that J.L. has significant needs as an autistic child and requires specialized care. Once again, Edward was unable or unwilling to appreciate the degree of J.L.'s needs, let alone to care for him. In contrast, J.L. is bonded to his foster mother and foster brother, and they are ready, willing, and able to care for him. Based on the foregoing, it would be meritless to argue that the termination of Edwards's parental rights was against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we grant counsel's motion for leave to withdraw and affirm the judgment of the circuit court of Kane County.

¶ 36 Affirmed.