

NOTICE
Decision filed 07/20/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 220154-U

NO. 5-22-0154

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> ADOPTION OF BLAKE B., a Minor)	Appeal from the
)	Circuit Court of
(Ramona R. and Robert G.,)	Madison County.
)	
Petitioner-Appellees,)	
)	
v.)	No. 19-AD-63
)	
Aymara R.B.,)	
)	
Respondent-Appellant,)	
)	
and)	Honorable
)	Amy Maher,
James A.B., Respondent).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Boie and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in terminating respondent’s parental rights or in finding that adoption by petitioners was in the child’s best interest. As any argument to the contrary would lack merit, we grant respondent’s appointed counsel on appeal leave to withdraw and affirm the judgment of the circuit court.

¶ 2 Ramona R. and Robert G. filed a petition to adopt Blake B. The petition alleged that respondents, Aymara R.B. and James A.B., were unfit parents and that adoption of the child by the petitioners, her maternal grandmother and her husband, would be in Blake B.’s best interests. The trial court granted the petition and respondent Aymara R.B. appealed.

¶ 3 Respondent’s appointed attorney on appeal has concluded that this appeal lacks merit. Accordingly, counsel has filed a motion to withdraw as counsel for the respondent (see *Anders v. California*, 386 U.S. 738 (1967)) along with a brief in support of the motion. Counsel has provided the defendant with a copy of her *Anders* motion and brief. This court has provided respondent with ample opportunity to file a written *pro se* brief, memorandum, etc., responding to counsel’s motion or explaining why this appeal has merit. Respondent has filed a response. Having read counsel’s *Anders* motion and brief, respondent’s response thereto, and having examined the record on appeal, this court concludes that the instant appeal does indeed lack merit. There is no potential ground for appeal. Accordingly, we grant counsel leave to withdraw and affirm the judgment of the circuit court.

¶ 4 **BACKGROUND**

¶ 5 The adoption petition alleged that respondents were unfit parents on numerous grounds, including that they had (1) abandoned the child; (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child’s welfare; (3) deserted the child for more than 3 months; and (4) had failed to visit the minor for more than 12 months. See 750 ILCS 50/1(D)(a), (b), (c), (n)(1)(i) (West 2018). The petition further alleged that it would be in the minor’s best interest to be adopted by petitioners.

¶ 6 At the unfitness hearing, Ramona testified that respondent had some run-ins with the law as a teenager, including a conviction for driving under the influence of alcohol while she was in high school. However, she graduated high school and attended Southern Illinois University for a year. She got a job at the racetrack, eventually becoming a jockey. She met her husband at the racetrack. However, she began using drugs regularly and the minor was frequently left in petitioners’ care.

¶ 7 According to Ramona, in the beginning of Blake B.'s life respondent took care of her appropriately. In August 2016, Ramona and respondent became embroiled in a dispute about the minor during which respondent grabbed Ramona from behind. Respondent was arrested and Ramona obtained an order of protection against her.

¶ 8 In November 2016, respondent was granted supervised visits at Ramona's house with Ramona not present. These visits did not go well so it was proposed that the visits be moved to Kids' Corner. However, no visits occurred there because respondent did not appear for the required orientation. A visit was set for Christmas Day, 2016, at Robert and Ramona's home, but respondent did not appear.

¶ 9 Ramona testified that respondent did not see her daughter from December 2016 through the date the adoption petition was filed, nor did she ask for visits during that time. Respondent did not send cards, letters, Christmas or birthday gifts, or provide any support for Blake B. except for three \$100 payments in 2020.

¶ 10 In December 2020, respondent filed a petition for visitation acknowledging that she had not seen the child since December 2016. As a result, respondent was offered Zoom parenting time but did not accept. She participated in several Zoom visits in May 2021, but the visits were discontinued after respondent appeared for one such visit apparently under the influence of drugs.

¶ 11 Ramona testified that the minor, age 6½, is developmentally delayed, receives speech and occupational therapy, and has the cognitive level of a 3- to 4-year-old. The minor also has limitations with eating and has to be closely monitored while eating and introducing new foods. Ramona did not believe that respondent recognized these limitations. Ramona found social media posts indicating that respondent was a sex worker, and respondent eventually admitted as much to her.

¶ 12 Ramona opined that respondent has failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. Ramona believed that respondent deserted the child in the three months prior to the filing of the adoption petition because she did not visit Blake, have any contact with her, or send cards, letters, or gifts. She further believed that respondent intended to forego her parental rights as shown by her failure to visit the child for 12 months before the petition was filed. Respondent also failed to communicate with Blake in the 12 months prior to the filing of the adoption petition.

¶ 13 Ramona testified that at no time did she or her husband deny respondent's visitation requests or prevent her from contacting Blake. Respondent failed to plan for the future of the child or provide financial support between June 2018 and June 2019. Ramona believed respondent was unfit because she failed to provide adequate food, clothing, or shelter from 2016 through the filing of the petition. Finally, Ramona believed that respondent was unfit because she had a drug addiction.

¶ 14 Robert G. testified that he supervised visits in his home in November 2016. After that, respondent had no contact with Blake from 2017 through 2019 and did not contact him to set up visits during that time. Respondent never asked him about Blake and provided no money, supplies, cards, or letters. Janel Freeman, the guardian *ad litem* (GAL), testified that, during Zoom visits in May 2021, respondent was under the influence of drugs.

¶ 15 In a rambling statement, respondent said that during much of the case she could not take care of Blake because she could "not even take care of herself." She insisted that she was "not that much of a drug addict" and asked the court not to completely terminate her parental rights.

¶ 16 Respondent did not believe that she could contact her parents to provide anything for Blake because of the order of protection and that her parents impeded her from seeing Blake.

¶ 17 The court found by clear and convincing evidence that respondent Aymara R.B. was unfit on the grounds that she failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare; failed to visit the child for more than 12 months; failed to communicate with the child for more than 12 months; failed to maintain contact with or plan for the future of the child for more than 12 months; and was habitually drunk and/or addicted to drugs. Noting that respondent James A.B. had not filed any responsive pleadings, appeared at the hearing, or otherwise participated in the case, the court found him to be an unfit person as alleged in the petition.

¶ 18 At the best-interest hearing, Ramona testified that respondent had played no role in addressing Blake's medical or nutritional issues since December 2016. Blake has non-mosaic classic Turner syndrome and is missing an X chromosome entirely. Her endocrine system is affected, growth is a major issue with Turner syndrome, and it affects her hearing, kidneys, and her heart. She had heart surgery when she was about five days old, has speech problems, hearing issues, and developmental issues. Due to her medical issues, Blake is homeschooled and Ramona did not believe respondent could provide the educational, medical, or nutritional support for the minor. Ramona does not believe respondent could effectively communicate with Blake or give her the consistency she needs. Finally, Ramona testified that, between the time of the fitness hearing and the best-interest hearing, respondent did not take Ramona and Robert's offers to see Blake, provided no gifts, and did not call to inquire about Blake. Robert agreed with his wife's assessment, and further stated that he believed Blake was his daughter. The child has no bond with respondent.

¶ 19 Respondent testified that, until the order of protection was entered in December 2016, she handled all of Blake's care. She loves her daughter more than anything. She did not believe that

it was in Blake’s best interest to terminate respondent’s rights. Respondent stated that she would be able to care for her daughter’s needs and was willing to work with her parents to be an active parent. At the time of the hearing, she was working at Hen House from 5 a.m. until 2 p.m. five days a week and living with a friend. Respondent admitted that, between the fitness hearing and the best-interest hearing, she had no role in Blake’s medical care, and had had no role at all in her development since December 2016. Respondent admitted that she had recently been charged with felonies for possession of methamphetamines. The GAL opined that it was in Blake’s best interests for respondent’s parental rights to be terminated and the adoption be approved.

¶ 20 The court found that it was in the minor’s best interest to terminate the parental rights of both respondents. Respondent Aymara R.B. timely appealed. Respondent James A.B. did not and is not party to this appeal.

¶ 21 ANALYSIS

¶ 22 Appellate counsel suggests three possible issues that respondent could raise but concludes that none has even arguable merit. We agree.

¶ 23 Counsel first suggests that there is no arguable merit to a contention that the trial court erred in finding respondent unfit on one or more of the grounds alleged in the petition. The Illinois Adoption Act (Act) defines an “unfit person” as “any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption.” 750 ILCS 50/1(D) (West 2018). The statute then enumerates specific grounds of unfitness. *Id.* A court must find a parent unfit by clear and convincing evidence. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 65 (2005).

¶ 24 Here, the trial court found respondent unfit on the grounds that she failed to maintain a reasonable degree of interest, concern, or responsibility as to the child’s welfare; failed to visit the

child for more than 12 months; failed to communicate with the child for more than 12 months; failed to maintain contact with or plan for the future of the child for more than 12 months; and engaged in habitual drunkenness and drug addiction.

¶ 25 A parent is unfit if he or she fails to maintain a reasonable degree of interest, concern, or responsibility as to the child’s welfare. 750 ILCS 50/1(D)(b) (West 2018). In determining unfitness under this section, a court must “examine the parent’s efforts to communicate with and show interest in the child, not the success of those efforts.” *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990).

¶ 26 Ramona and Robert testified that respondent did not see her daughter from December 2016 until well after adoption petition was filed, nor did she ask for visits. She did not ask about Blake during that time. Respondent did not send cards, letters, Christmas or birthday gifts, or provide support for the child except for \$300 in 2020. Respondent conceded that during that part of her life she could not take care of Blake because she could not even take care of herself. In light of the undisputed evidence that respondent had virtually no contact with Blake for nearly four years, the court did not err in finding that respondent failed to maintain a reasonable degree of interest in, concern for, or responsibility for the minor’s welfare.

¶ 27 Evidence of a single statutory ground is sufficient to uphold a finding of parental unfitness. *In re T.Y.*, 334 Ill. App. 3d 894, 905 (2002). Thus, the trial court’s finding that respondent failed to maintain a reasonable degree of interest, concern, and responsibility suffices to find that she was an unfit parent. We note briefly, however, that the evidence supported the court’s findings on the other grounds of unfitness.

¶ 28 The court also found that respondent evidenced an intent to forego her parental rights. Parental unfitness may be established by:

“Evidence of intent to forgo his or her parental rights *** (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so.” 750 ILCS 50/1(D)(n) (West 2018).

¶ 29 In the absence of evidence to the contrary, we presume that a parent has the ability to visit, communicate, maintain contact, pay expenses, and plan for the child’s future. *Id.*

¶ 30 In this regard, Ramona testified that respondent did not see her daughter from December 2016 through the date of the adoption petition, nor did she ask for visits. Robert testified that respondent only attended two of the visits in November and December 2016. He further testified that respondent had no contact with Blake B. from 2017 through 2019. Respondent never asked about Blake, and provided no money, supplies, cards, or letters. Although orders of protection barred respondent from contact with Ramona, both Ramona and Robert testified that they attempted to facilitate visits consistent with the terms of the order, with Robert arranging visits.

¶ 31 The court also found that respondent engaged in habitual drunkenness and/or drug addiction. *Id.* § 1(D)(k). The evidence showed that respondent had several positive drug tests and attended rehab. Additionally, she had pending drug charges. She admitted that she had been to rehab twice during the pendency of the case. The GAL testified that during Zoom visits in 2021, respondent was under the influence of drugs.

¶ 32 Counsel next concludes that there is no arguably meritorious argument that the trial court erred by terminating respondent’s parental rights. In making a best-interest decision, a court must consider several factors in the context of the child’s age and specific needs: (a) the child’s physical safety and welfare; (b) the development of the child’s identity; (c) the child’s background and ties;

(d) the child's sense of attachments, including love, security, familiarity, and continuity of relationships with parental figures; (e) the child's wishes and long-term goals; (f) the child's community ties, including church, school, and friends; (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks attendant to entering and being in substitute care; and (j) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 33 Evidence at the best-interest hearing showed that Blake had resided with Ramona and Robert almost exclusively for more than five years. They had provided for her needs, including those resulting from her medical condition. Respondent acknowledged that she had no contact with Blake from 2016 until the Zoom visits in 2021, and no contact from May 2021 through the best-interest hearing. Ramona and Robert saw themselves as Blake's parents, and the minor had no bond whatsoever with respondent. Because Blake had been residing with petitioners, she would be able to maintain continuity in school and social situations. Ramona is her biological grandmother, ensuring that family relationships can be maintained to the extent possible. Thus, the evidence supported the court's determination that it was in the minor's best interest to terminate respondent's parental rights.

¶ 34 Finally, counsel asserts that there is no arguable merit to an argument that respondent's counsel was ineffective. In a parental termination action, the respondent has a right to the effective assistance of counsel as defined in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re R.G.*, 165 Ill. App. 3d 112, 127 (1988). To show that counsel was ineffective a respondent must show that her counsel's representation fell below an objective standard of reasonableness and that there is a

reasonable probability that, absent that unreasonable conduct, the result of the proceeding would likely have been different. *Id.* at 127-28 (citing *Strickland*, 466 U.S. at 687-95).

¶ 35 Here, like counsel, we find that the record demonstrates no examples of subpar representation by respondent's counsel. Moreover, given the overwhelming evidence that respondent played virtually no role in the minor's life for more than five years and that placement with petitioners was in the minor's best interest, it is unlikely that any alleged mistakes by counsel affected the outcome of the proceeding.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, we grant counsel's *Anders* motion and affirm the judgment of the circuit court.

¶ 38 Motion granted; judgment affirmed.