2024 IL App (5th) 230657-U

NOS. 5-23-0657, 5-23-0658 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re TRAXTAN B. and TRAZILYAN B., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Wayne County.
	)	
Petitioner-Appellee,	)	
	)	Nos. 18-JA-32
v.	)	19-JA-54
	)	
Felicia B.,	)	Honorable
	)	Michael J. Molt,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Boie and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's finding that respondent was an unfit parent was supported by evidence that she had three prior felony convictions, had failed to bond with her children, and continued to prioritize other people and interests. The court's finding that terminating her parental rights was in the children's best interests was supported by evidence that they were well provided for in their foster placements and that the foster parents wanted to adopt them. As any argument to the contrary would lack merit, we grant respondent's appointed counsel on appeal leave to withdraw and affirm the circuit court's judgment.

¶ 2 Respondent, Felicia B., appeals the circuit court's orders finding her an unfit parent and terminating her rights to her children, Traxtan B. and Trazilyan B. Her appointed appellate counsel has concluded that there is no reasonably meritorious argument that the circuit court erred in either respect. Accordingly, he has filed a motion for leave to withdraw as counsel and an accompanying

memorandum. See *Anders v. California*, 386 U.S. 738 (1967). Counsel has notified respondent of his motion, and this court has given her ample opportunity to respond. However, she has not done so. After reviewing the record on appeal and counsel's motion and supporting memorandum, we agree that there is no issue that could support an appeal. Accordingly, we grant the motion to withdraw and affirm the circuit court's orders.

¶ 3 BACKGROUND

¶ 4 In 2018, respondent drove her car, with three-month-old Traxtan inside, into a house. After the accident, she was seen attempting to conceal contraband. Respondent was charged with driving under the influence of methamphetamine. Traxtan was taken into protective custody and the State petitioned for adjudication of wardship. Following a hearing, the court made Traxtan its ward. In 2019, respondent gave birth to Trazilyan. She was born with methamphetamine in her system and was immediately removed from respondent's care. Ultimately, Trazilyan was found to be abused or neglected and made a ward of the court.

¶ 5 In 2022, the State filed separate petitions to terminate respondent's parental rights to both children. The petitions' allegations are slightly different, but they contain the common claims that respondent was depraved, failed to make reasonable efforts toward returning the children to her, and failed to make reasonable progress toward the goal of reunification. The court consolidated the cases for purposes of a termination hearing.

¶ 6 At the hearing, Jennifer Vaughn testified that she supervised respondent's probation in three separate cases arising in Richland, Clay, and Wayne Counties. Each case arose in 2018 and involved the possession of methamphetamine. Certified copies of the convictions were admitted into evidence.

¶ 7 Vaughn testified that respondent admitted to using methamphetamine in October 2020 and July 2021. Vaughn was concerned that Traxtan's father, Andy B., who Vaughn knew, had prior drug offenses and was a bad influence on respondent. Andy B. was reportedly living with respondent "at least half the time." All told, respondent had four positive drug tests during the time Vaughn supervised the case.

¶ 8 Amber Ambuehl testified that she was respondent's caseworker. Respondent was in either inpatient or outpatient substance-abuse treatment almost the entire time that Ambuehl was involved in the case. Respondent had positive drug tests in August and September of 2018. During the COVID pandemic, she admittedly relapsed. Despite issues with getting her into residential treatment due to the pandemic, she eventually went through treatment in October and November.

¶ 9 Respondent regularly attended visits with the children. However, she often missed visits and did not reschedule them. She failed to take advantage of opportunities to spend more time with the children. An evaluator opined that if respondent was "serious about regaining custody of her children, she needs to prioritize her children," noting that respondent was able to find time for other activities but consistently made excuses when it came to the children.

¶ 10 The evaluator questioned respondent's ability to connect with her children. She was unable to make healthy choices in relationships. She had little contact with her mother, who was her son's caregiver. However, she continued to maintain unhealthy relationships with her children's fathers. Respondent would "report benefitting or making progress in counseling or services but beyond surface regurgitation, she can articulate or demonstrate little to no progress."

¶ 11 Ambuehl testified that respondent continued to reside with her grandmother, making minimal efforts to obtain a home of her own. She did not have a driver's license during most of this time and relied on her grandmother to drive her around and do other things for her. Given that

"there was no progress being made in the areas of bond or really seeing any behavioral change or really effort to get those children returned," the recommendation was that "it's in the best interest of the children to move forward with permanency."

¶ 12 Ladonna Isle, respondent's grandmother, opined that it was in the children's best interests to remain in their current placements. Although she did not necessarily feel that respondent was a bad parent, she could "provide for them like they're being provided for."

¶ 13 Respondent testified that she was clean and sober. She had obtained her own home and a driver's license. She completed a bachelor's degree online and was working on her master's degree. She hoped to establish a rehabilitation facility involving horses for addicts and others with mental illnesses. She testified that she had been appointed numerous attorneys throughout the case and had worked with a number of caseworkers from two different agencies. None had given her clear directions about what was expected of her or how to accomplish those things. She acknowledged that she remained friends with Andy B. and others who were involved with drugs. She did not intend to "abandon" her friends.

¶ 14 The court found respondent unfit. It specifically found that the State had proved that she was depraved and had failed to make either reasonable efforts or reasonable progress toward the children's return.

¶ 15 At the best interests hearing, guardian *ad litem* Heidi Hoffee testified. She recounted the history of the case, noting that Vaughn had testified about respondent's relapses and stated that she continued to associate with her friends who are known to use methamphetamine, including Traxtan's father, who had recently lived with her. Hoffee was concerned about respondent's statements that she had no intention of changing her friends.

¶ 16 Respondent had visited the minors regularly over the years, but it was reported that they both suffered from anxiety following visits with her, including stomach issues and the inability to sleep. There "continued to be concerns about bonding and [respondent]'s ability to parent the Minors." A parenting capacity evaluation questioned respondent's ability to connect with the children. She continued to make excuses for not complying with her service plans and continued to focus on other endeavors while not prioritizing the children.

¶ 17 The evaluator further noted that respondent continued to make bad decisions regarding her relationships. She often did not take prescribed medications for her mental health for various reasons. She had four other children who had not been in her care for many years. Traxtan was three months old when he was removed from her care in 2018 and was then five years old. Trazilyan was three years old and had never lived with respondent.

¶ 18 For the last six to seven years, respondent had lived primarily with her grandparents. She relied upon them for support, including food, housing, and transportation. Respondent's grandmother, Isle, also helped with the minors during visits. Although respondent had recently obtained her own housing, Traxtan's father informed the probation department that it was also his address.

¶ 19 Throughout the case, Hoffee had met with the minors in their foster homes. Those homes were stable, with no illegal drug use and sufficient resources to meet the minors' needs. The foster parents were capable of caring for the minors without assistance. The homes were clean and well-maintained. Each child has his or her own bedroom. They were bonded with the foster parents. They are healthy and all of their needs are met. The foster parents wanted to adopt them. Hoffee observed that the minors were very comfortable with their foster parents, which was not surprising given that they had lived with those foster parents for most of their lives. Traxtan had lived with

Dawna and Ernie Andrews for five years and Trazilyan had lived with Sara and Chris Wise for almost three years. Accordingly, Hoffee recommended that respondent's rights be terminated.

¶ 20 Dawna Andrews, respondent's mother, testified that Traxtan had lived with her and her husband for most of his life. They loved him, were able to meet his needs, and were willing to adopt him.

¶ 21 Sara Wise testified that Trazilyan had lived with her and her husband since she was 10 months old. Trazilyan got along with her two sons. She had no concerns about being able to provide a safe, nurturing environment for her. She and her husband were willing to adopt Trazilyan if the opportunity arose.

¶ 22 The court found that it was in the children's best interests to terminate respondent's parental rights and grant the Department of Children and Family Services (DCFS) custody with the authority to consent to their adoption. Respondent timely appealed.

¶ 23 ANALYSIS

¶ 24 Appellate counsel concludes that there is no good-faith argument that the circuit court erred in finding respondent unfit and terminating her parental rights. We agree.

¶ 25 The Juvenile Court Act of 1987 delineates a two-step process to terminate parental rights involuntarily. 705 ILCS 405/2-29(1) (West 2022). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). The State need prove only one ground of unfitness to find a parent unfit. *In re J.A.*, 316 Ill. App. 3d 553, 564 (2000). Such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re M.I.*, 2016 IL 120232, ¶ 21.

¶ 26 Here, the court found that respondent was depraved and had failed to make reasonable efforts or reasonable progress toward the goal of returning the children to her care. "Depravity" means " 'an inherent deficiency of moral sense and rectitude.' " *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). A rebuttable presumption of depravity exists where the parent has three prior felony convictions, one of which occurred within the previous five years. 750 ILCS 50/1(D)(i) (West 2020). Proof of the requisite convictions creates a *prima facie* case of depravity requiring the parent to present evidence she is not depraved. *In re J.A.*, 316 Ill. App. 3d at 562.

¶ 27 Here, the State established the three convictions, all of which involved the possession of methamphetamine. The evidence also showed that respondent had been undergoing substance abuse treatment for virtually the entire time the case had been open and had relapsed multiple times. She continued to associate with Andy B. and other friends who used drugs and testified that she did not intend to abandon those friends. While respondent testified that she was currently sober and reported some achievements in other areas, such as obtaining a college degree, the circuit court found that she had not overcome the presumption of depravity. To hold otherwise would require us to reweigh the evidence, which we may not do. *People v. Torres*, 327 Ill. App. 3d 1106, 1110 (2002) (as a court of review, we do not reweigh the evidence or substitute our judgment for that of the trier of fact).

¶ 28 The court further found that respondent had failed to make reasonable progress toward returning the children to her. "Reasonable progress relates to progress towards the broadly defined goal of the return of the child to the natural parent. [Citation.] The standard by which progress is to be measured is parental compliance with the court's directives, the DCFS service plan, or both." *In re J.A.*, 316 Ill. App. 3d at 564. "At a minimum, reasonable progress requires measurable or

demonstrable movement toward the goal of reunification." *In re M.C.*, 201 Ill. App. 3d 792, 798 (1990).

¶ 29 Evidence showed that respondent continued to have difficulty "bonding" or "connecting" with the children. She often made excuses for missing visitations and did not reschedule. Evaluators noted that, when she did attend, she seemed uninvolved. She failed to take advantage of opportunities to spend additional time with the children. Until shortly before the hearing, she had made little effort to obtain her own home, preferring to live with her grandmother and rely on her for services including transportation. She continued to associate with Andy B. and other friends who were known drug users and to prioritize other endeavors over her children. While respondent's testimony provided a different perspective and demonstrated progress in some areas, the court's finding of a lack of progress was not against the manifest weight of the evidence. Given that the State need prove only one ground of unfitness (*In re J.A.*, at 316 Ill. App. 3d at 564), these findings support the court's decision finding respondent unfit.

¶ 30 Counsel further concludes that there is no reasonably meritorious argument that the circuit court erred in finding that terminating respondent's parental rights was in the children's best interests. Once the court determines that a parent is unfit, the court must decide whether it is in the minor's best interests to terminate his or her parental rights. 705 ILCS 405/2-29(2) (West 2022). At this stage, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove, by a preponderance of the evidence, that the minor's best interests justify termination of the parent's rights. *Id.* We will not reverse such a finding unless it is against the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1116 (2002).

¶ 31 Here, Hoffee, after recounting the history of the case, concluded that the children's best interests required terminating respondent's parental rights. She noted that the children were well cared for in their respective foster homes and that the foster parents were capable of providing for their needs. The foster mothers confirmed that they loved the children and were willing to adopt them given the opportunity. Thus, the circuit court's decision to terminate respondent's rights was well supported by the evidence.

¶ 32 CONCLUSION

¶ 33 As this appeal presents no issue of arguable merit, we grant counsel leave to withdraw and affirm the circuit court's judgment.

¶ 34 Motion granted; judgment affirmed.