

NOTICE
Decision filed 08/28/24. 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.

2024 IL App (5th) 240433-U
NO. 5-24-0433
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> ROBERT W. II, a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Marion County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 21-JA-72
)	
Lindsay H.,)	Honorable
)	Ericka A. Sanders,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Barberis and McHaney concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence amply supported the circuit court’s findings that respondent was unfit and that the minor’s best interests required terminating her parental rights. As any contrary argument would be frivolous, we allow appointed counsel to withdraw and affirm the circuit court’s judgment.
- ¶ 2 Respondent, Lindsay H., appeals the circuit court’s orders finding her an unfit parent and terminating her parental rights to Robert W. II. Her appointed appellate counsel has concluded that there is no reasonably meritorious argument that the circuit court erred in doing so. Consequently, she has filed a motion for leave to withdraw as counsel on appeal and a supporting memorandum. Counsel has notified respondent of her motion, and this court has provided her with ample opportunity to respond. However, she has not done so. After considering 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 counsel leave to withdraw and affirm the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 The Department of Children and Family Services (DCFS) took custody of the minor shortly after he was born with methamphetamine in his system. The State filed a petition for adjudication of wardship alleging that the minor was neglected by virtue of having methamphetamine in his system at birth. The petition further alleged that he was in an injurious environment given that respondent and the minor's father, Robert W., had a history of domestic violence.

¶ 5 Following a June 23, 2021, hearing, the court granted DCFS temporary custody of the minor. Evidence showed that DCFS received a hotline call in which the caller stated that the minor had tested positive for Adderall, benzodiazepines, amphetamines, methamphetamine, and buprenorphine shortly after his birth. Respondent had also tested positive. She admitted to her caseworker that she had been using methamphetamine on and off since 2020, and had done so on June 11, 2021, three days prior to the minor's birth. She claimed to have prescriptions for other substances for which she tested positive. At a later hearing, both parents admitted the petition's allegations.

¶ 6 A dispositional report in August 2021 stated that during visitations respondent showed signs of substance abuse, which included nodding off with the minor in her arms, her eyes rolling back in her head, barely being able to stand, and her body twitching. She had difficulty keeping her eyes open and had to be reminded repeatedly to not fall asleep with Robert in her arms.

¶ 7 A subsequent status report showed that respondent had attended only one scheduled drug test, which was negative. However, she had recently completed inpatient rehabilitation at Gateway

House and been discharged to a residential facility called Angels' Cove. Respondent had obtained an emergency order of protection against Robert W., based on his having left threatening messages, following her in his car, and trying to run into her car. The petition was later dismissed, however, when respondent failed to appear at the hearing. Instead, she continued to associate with Robert W. after those incidents.

¶ 8 At a February 9, 2022, permanency hearing, the court found that respondent had made reasonable efforts but not reasonable progress. She was still associating with Robert W. Further, they had been involved in a domestic dispute at the Children's Resource Center (CRC) which resulted in the police being called.

¶ 9 A May 11, 2022, report showed that respondent was generally doing well and had put Robert W. on the restricted visitors list at Angels' Cove. She had completed a domestic-violence group and was engaged in individual therapy.

¶ 10 Respondent subsequently gave birth to a daughter, who had been taken into protective custody upon her release from the hospital. Respondent admitted that she had used methamphetamine once in March 2022.

¶ 11 On July 11, 2022, the State filed a petition to terminate parental rights, alleging that respondent was unfit for failing to make reasonable efforts to correct the conditions that were the basis for the minor's removal, or to make reasonable progress toward his return. The State further alleged that she failed to maintain a reasonable degree of interest, concern, or responsibility for his welfare. The petition alleged specific nine-month periods from July 21, 2021, to April 21, 2022, and from October 8, 2021, to July 8, 2022.

¶ 12 A status report filed on September 12, 2022, showed that respondent had placed \$15 in Robert W.'s jail account, despite her having an active order of protection against him. Jail records

demonstrated that he had called respondent from the jail more than 400 times between March 1, 2022, and June 16, 2022; she had accepted 167 of those calls. June 1, 2022, through August 29, 2022, saw an additional 166 calls between respondent and Robert W.

¶ 13 At the fitness hearing, Leah Omoruyi testified that she was the family's caseworker from June 2021 until March 2022. She prepared an initial service plan, assigning respondent several tasks, including cooperating with the agency, visiting with her child, finding legal employment, and obtaining domestic violence treatment, a mental health assessment, and any necessary counseling.

¶ 14 Omoruyi evaluated the service plan in December. She rated respondent satisfactory for signing consents and engaging in services but unsatisfactory in that she had not completed any services and was not making progress in those services in which she was engaged. She was still seeing Robert W. and had had public altercations with him. She was not employed.

¶ 15 Omoruyi was also concerned that respondent was dishonest about her contact with Robert W. Overall, her compliance was rated unsatisfactory, even though she had completed substance abuse treatment at Gateway and been discharged to Angels' Cove.

¶ 16 For the remainder of the time Omoruyi was the caseworker, respondent resided at Angels' Cove. She did show interest in her child by visiting him, asking about his medical appointments and how he was doing, and occasionally bringing clothing and toys. However, she frequently fell asleep while holding her son and would sway when she stood up. She slurred her words. Respondent told Omoruyi she was just tired, but also admitted that she had been using methamphetamines.

¶ 17 Respondent said that Robert W. had been following her around after visits and threatening her, which caused the agency to have safety concerns about transporting the child to visits. As a

result, visits were suspended for a time. They were eventually reinstated and even increased in frequency for a short while. However, respondent never progressed to unsupervised visits.

¶ 18 Respondent was rated unsatisfactory on housing even though Angels' Cove was a suitable residence for her, and the minor could have resided there. It was not considered a stable, permanent option. Omoruyi was concerned that respondent stayed in contact with Robert W., especially given that she picked him up in her car to go to CRC. During that trip, Robert W. punched her in the face, took her keys and left her there, resulting in the CRC staff calling the police. At one point, respondent got an order of protection, but the court dismissed her request for a plenary order after she failed to appear at the hearing.

¶ 19 Rachel Warner testified that when she took over as the caseworker in April 2022, respondent was tasked with engaging in mental health and substance abuse treatment and parenting courses, obtaining safe and stable housing, and finding employment. At that time, she was pregnant and residing at Angels' Cove. She was engaged in parenting services and substance abuse treatment, but was unemployed and did not have stable, permanent housing.

¶ 20 In June 2022, Warner rated respondent unsatisfactory overall. Respondent was engaged in services but had delivered another child during that time. She had tested positive for methamphetamine during the pregnancy, and the child was removed as a result.

¶ 21 Respondent was not consistent with her visits after the goal was changed to substitute care. Between April 2022 and July 2022, she remained engaged in services, completing some of them. She was employed for a time but could not maintain it. Visits with her son went well, but she did not ask for additional visits during that time.

¶ 22 It was during Warner’s time as caseworker that Robert W. called respondent from jail more than 400 times in less than three months, with respondent answering about half of the time. She had also put money in his jail account.

¶ 23 A June 28, 2023, permanency report showed that respondent had contact with the Centralia Police Department concerning a retail theft. Drug paraphernalia and methamphetamines were found in the vehicle in which she was riding.

¶ 24 Respondent testified that that she did not get a service plan until a few months into her case, so she had to figure out what to do on her own. She found Gateway herself and successfully completed treatment there. She also found Angels’ Cove herself. She stayed there until August 2022. She believed that she had completed all of her required services while at Angels’ Cove. She took domestic violence classes on her own. Visits with her son went “great”; she brought toys and other gifts to the visits. She had asked for increased visitation more than once and wanted to proceed to unsupervised visits.

¶ 25 She worked for a while, but it was difficult to attend her groups and work at the same time. She admitted that she had tested positive for methamphetamine on March 29, 2022, which was after she completed treatment at Gateway. However, she did not believe that one relapse should overshadow all that she had accomplished. She also acknowledged that she smoked marijuana to address her bipolar disorder, chronic anxiety, and chronic mood disorders, and felt like she should get a medical marijuana card. She did not believe that smoking marijuana would render the environment unsafe for her son.

¶ 26 Respondent struggled to understand her role in the domestic violence incidents, as she had heard so many differing opinions about that issue. She admitted that there had been a violent episode in the car on the way to CRC, and the police had been called. She acknowledged that

Robert W. had been charged with an offense as a result. She did get an emergency order of protection against him although it was later dismissed. She had obtained other such orders in the past.

¶ 27 The court found both parents unfit. The court observed that, while respondent made reasonable efforts during the nine-month periods alleged, she experienced significant setbacks. Respondent's progress was never such that a return home was likely in the foreseeable future.

¶ 28 The cause proceeded to a best-interest hearing at which respondent failed to appear. Warner testified that she visited the minor monthly in his foster home. He called his foster parents "mom" and "dad," and was very bonded to them and to the other children in the home. He spent most of his time with his foster mother, who is the first person he would search for to be comforted. Warner opined that she went "above and beyond" to meet his needs.

¶ 29 Warner had heard the foster parents tell the child they love him. She believed that he felt loved in the foster home and would be "devastated" to be removed from it. The foster parents wanted to adopt him and could provide for him financially.

¶ 30 Warner observed respondent with her son. She acknowledged that the visits were appropriate. She bought clothes and shoes, and they appeared to be bonded to each other as well.

¶ 31 Janae Clarry testified that she became the caseworker for the family in November 2023. She described the foster home as very nice. The children had toys, clothes, and food. The family was tight-knit, and Clarry had no concerns about the placement at all. She believed Robert would be devastated to be removed from his foster home.

¶ 32 The court found that it was in the minor's best interest to terminate respondent's parental rights. Respondent timely appealed and the court appointed private counsel to represent her on appeal.

¶ 33

ANALYSIS

¶ 34 As noted, appellate counsel has concluded that there are no reasonably meritorious issues supporting an appeal. Counsel reasons that the court's decisions finding respondent an unfit parent and terminating her parental rights were supported by the evidence.

¶ 35 A proceeding to terminate a party's parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2022)) occurs in two stages. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). First, the State must establish that the parent is "unfit to have a child" under one or more of the grounds in the Adoption Act. *In re D.T.*, 212 Ill. 2d 347, 352 (2004); see 750 ILCS 50/1(D) (West 2022). At the unfitness hearing, the State bears the burden of proving, by clear and convincing evidence, that the parent is unfit to have a child. See *In re D.W.*, 214 Ill. 2d 289, 315 (2005).

¶ 36 Here, the minor was removed from respondent's care immediately after his birth because he was born with methamphetamine and other controlled substances in his system. Thus, substance abuse treatment was included in the service plans. While respondent completed inpatient treatment at Gateway, she had relapsed at least once in 2023. According to her caseworkers, she frequently appeared to be impaired from drug usage during visitations with the minor. She did not see smoking marijuana as creating a dangerous environment for the minor.

¶ 37 Moreover, respondent continued to associate with the minor's father, with whom she had been involved in numerous domestic violence incidents. She had not found a stable, permanent home but continued to reside at Angels' Cove. She was employed only briefly while the case was open but could not maintain that position. Although she had completed some tasks, the evidence supported the court's finding that she had not made reasonable progress toward the goal of returning the minor home.

¶ 38 Counsel further concludes that there is no meritorious argument that the court erred in terminating respondent’s parental rights. Once a parent is found unfit, the trial court moves on to the second stage of termination proceedings, which involves a determination of whether it is in the minor’s best interest to terminate parental rights. At this stage, the State must demonstrate, by a preponderance of the evidence, that the termination is in the minor’s best interest. *In re D.T.*, 212 Ill. 2d at 366-67.

¶ 39 Here, evidence showed that the minor was closely bonded to his foster parents and foster siblings, and to his sibling who is in the same home. Caseworkers observed the affection between the minor and his foster family. He calls his foster parents “mom” and “dad.” The current caseworker, Janae Clarry, testified that she had observed the family in their home; it was a very nice home, where Robert had all the clothes, toys, and food he could need. In her opinion, he would be devastated to be removed from that home. The foster parents wanted to adopt him and were financially capable of doing so. By contrast, respondent did not even appear for the best-interest hearing. Thus, there is no good-faith argument that the court erred by terminating respondent’s parental rights.

¶ 40 Counsel identifies one additional potential issue but concludes that it, too, lacks even arguable merit. Counsel notes that the original petition to terminate parental rights identified a nine-month period that began July 21, 2021, which was before the adjudication on July 28, 2021, that the minor was neglected. The Adoption Act provides a parent may be found unfit if she fails “(ii) to make reasonable progress toward the return of the child to the parent during any 9-month period *following* the adjudication of neglected or abused ***.” (Emphasis added.) 750 ILCS 50/1(D)(m)(ii) (West 2022).

¶ 41 Counsel thus concludes that this first nine-month period could not have been the basis for a finding that respondent failed to make reasonable progress. However, we agree with counsel that any error is harmless because, as noted, the evidence supported a finding that respondent failed to make reasonable progress during the second nine-month period alleged in the petition.

¶ 42 **CONCLUSION**

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

¶ 44 Motion granted; judgment affirmed.