2024 IL App (5th) 240601-U

NO. 5-24-0601

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MILANI J., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 21-JA-39
	)	
Montez J.,	)	Honorable
	)	Ericka A. Sanders,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Sholar concurred in the judgment.

ORDER

¶ 1 *Held*: Where respondent failed to address any services in his service plan in over two years and failed to keep in contact with his caseworker, there is not a reasonably meritorious argument that the trial court erred in finding him an unfit parent and terminating his parental rights. As any argument to the contrary would be frivolous, we grant respondent's appellate counsel leave to withdraw and affirm the trial court's judgment.

¶ 2 Respondent Montez J. appeals the circuit court's orders finding him to be an unfit parent and terminating the parental rights to his daughter, M.J. His appointed appellate counsel has concluded there is no reasonably meritorious argument that the circuit court erred in either respect. Accordingly, she filed a motion for leave to withdraw as counsel and a supporting memorandum. See *Anders v. California*, 386 U.S. 738 (1967). Counsel has notified Montez J. of her motion, and

this court has given him ample opportunity to respond. However, he has not done so. After reviewing the record on appeal and counsel's motion and supporting memorandum, we agree that no issue could support an appeal. Therefore, we grant the motion to withdraw and affirm the trial court's orders.

¶ 3 I. BACKGROUND

¶ 4 Since we find no appealable issues exist, our discussion of the facts of the case will be condensed. On March 22, 2021, the State filed a petition for adjudication of wardship for M.J., who was born on January 26, 2021. The petition alleged that M.J. was neglected for being in an injurious environment because her mother, Tiffany G., and her father, Montez J., were involved in a domestic disturbance while she was present. The petition further alleged that M.J. was neglected due to being in an injurious environment because of Tiffany G.'s alcohol use, mental health issues, and prior substance abuse issues that did not improve following the provision of intact services. An order for temporary custody was entered that same day.

¶ 5 On June 21, 2021, the trial court adjudicated M.J. neglected and, on July 12, 2021, made M.J. a ward of the court and granted guardianship to the Department of Children and Family Services (DCFS). On June 22, 2023, the State filed a petition for termination of parental rights. It alleged that Montez J. was unfit for failing to make reasonable efforts to correct the conditions that were the basis for the minor's removal, identifying June 22, 2021, to March 22, 2022, March 23, 2022, to December 23, 2022, and August 23, 2022, to May 23, 2023, as the relevant nine-month periods. It also alleged that Montez J. was unfit for failing to make reasonable progress, citing the same three periods.

¶ 6 The unfitness hearing occurred over several days, starting July 31, 2023.[1] Aaron Konrad, an internal affairs lieutenant at Vandalia Correctional Center, testified first. Part of his duties include monitoring telephone calls and messages. Montez J. was transferred to Vandalia Correctional Center in December 2022 and, shortly after arriving at the facility, made a three-way call that flagged their system because such calls were against policy. Konrad listened to the call and heard Montez J. threaten Tiffany G. Montez J. subsequently sent a GTL message saying he was going to kill the person she was dating. A G.L message is a message that an inmate can send to anyone in the public, subject to approval by the correctional facility. Because of that message, Konrad blocked Tiffany G.'s number. Montez J. sent Tiffany G. another GTL message telling her she needed to get a Textnow number, which she did. Several weeks later, Montez J. sent the new number to get approved on his list.

¶ 7 Konrad screened approximately a hundred calls a month of Montez J.'s because he kept calling Tiffany G. and two other people three-way. Montez J. would call Tiffany G. six to eight times a day, and out of those, she would pick up four. Generally, they would talk for 15 to 20 seconds, argue, and Tiffany G. would hang up on him.

¶ 8 Montez J.'s release date (at the time of the hearing) was December 2023. He was not eligible for earned discretionary service credit, a credit first-time offenders can receive that moves up release dates, because he received too many major tickets.

¶ 9 Exhibits of GTL logs and GTL messages were admitted as evidence. The logs contained over one hundred calls to or from (618) 237-**** (number redacted for privacy purposes) between December 26, 2022, and April 4, 2023. There were hundreds of messages between Montez J. and

[1]The unfitness and best interest hearings involved both parents and one additional child, but we will only discuss the facts as they pertain to the father and M.J., as they are the only parties to this appeal (along with the State).

Tiffany G. from February 21, 2023, to April 1, 2023, but some messages may not have been sent if they were threatening and filtered out.

¶ 10 The matter was continued to September 13, 2023. On that date, Jennifer Hoene, a foster care supervisor for Caritas Family Solutions, testified for the State. The State presented an initial 45-day service plan dated May 5, 2021, and a subsequent service plan dated June 8, 2021, as evidence. The trial court took judicial notice of both but stated that it "only considers the services that were recommended and the ratings. There's lots of other information in the report that certainly would constitute hearsay, and I'll not consider that at all."

¶ 11 The fitness hearing was continued to October 25, 2023. The trial court took judicial notice of the September 20, 2022, service plan. Kristina Wilson, a child welfare advance specialist intact with DCFS, testified next. This matter was transferred from Caritas to her agency in March 2023, and she was the caseworker from March 2023 to June 1, 2023.

¶ 12 Upon receiving the case, Wilson spoke with Montez J. and prepared a service plan in March 2023. Montez J.'s services included mental health, substance abuse, parenting, domestic violence, and stable housing. She reviewed the service plan with Montez J. by phone, as he was in the Department of Corrections the entire time she had the case. He told her there were no services he could engage in while incarcerated and that he had addressed services prior but could not obtain any records to verify that information. M.J. was placed with Montez J.'s mother, and during his incarceration, Montez J. would contact his mother and have video phone calls with M.J.

¶ 13 Wilson testified that there was never any discussion about returning M.J. to Montez J. because he was incarcerated and needed to complete services. Wilson indicated she would rate Montez J.'s service plan as unsatisfactory.

¶ 14 On cross-examination, Wilson testified that Montez J. had never been convicted of domestic violence or anything related to substance abuse or possession of drug paraphernalia. His incarceration was for the traffic offense of fleeing and eluding. This concluded the State's evidence.

¶ 15 The matter was continued to November 29, 2023, and on that date, the State moved to reopen its case for additional testimony. Over Montez J.'s objection, it was allowed. The trial court took judicial notice of the service plan dated March 8, 2022, but only to the extent that it contained recommended services and ratings.

¶ 16 Ann Whalen testified next for the State. From December 2021 to March 2023, she was a foster care case manager with Caritas Family Solutions and Montez J.'s caseworker. During that period, the services she recommended for Montez J. included domestic violence assessment and follow recommendations, substance abuse assessment and follow recommendations, and mental health services. Montez J. was incarcerated at the end of her involvement with the case.

¶ 17 Montez J. did not maintain communication with Whalen. She tried to meet with him in person several times. In one instance, she asked him to come to the office to get his service plan, but he showed up an hour late, and the meeting did not occur. She also tried to assist him in getting into his various services. She mailed him the service plan and left several messages, providing him with phone numbers and detailed instructions on who to call, for what reason, and at what time. Montez J. never responded to her with questions about the service plan. She followed up with service providers weekly to see if he had contacted them and would then contact Montez J. and send him reminders to make his appointments. The only time he would contact her would be to tell her he did not need services.

¶ 18 Whalen testified that one domestic violence assessment revealed multiple orders of protection against him by various women. Montez J., however, told her that it was his brother and not him who these orders of protection were against. However, Whalen indicated they had searched using Montez J.'s social security number, so they were confident it was Montez J. Whalen testified that Montez J. continuously denied being involved with Tiffany G. but admitted to her just before his incarceration that the two had been involved the entire time the case was open.

¶ 19 During the time she had the case, Montez J. did not engage in domestic violence classes, mental health services, or parenting classes. Regarding visits, Whalen testified that it was difficult to track whether he visited because his mother, the caregiver for M.J., did not cooperate with completing the necessary visitation forms to document when visits occurred. Whalen never observed Montez J. with the child.

¶ 20 Whalen did not receive documentation from any service provider indicating that Montez J. had successfully completed services. She rated all of his tasks in his service plan as unsatisfactory because he did not make appointments or participate in recommended services.

¶ 21 On cross-examination, Whalen testified she was his caseworker from December 2021 to March 2023 and never met with Montez J. because she could not locate him. Montez J. completed a domestic violence assessment, but she did not believe the results, so she had him undergo a second assessment. Montez J. completed a second assessment, but Whalen does not recall whether it revealed the same results as the first. Montez J. completed a substance abuse assessment, and she does not remember if Montez J. completed a mental health assessment. This concluded the State's evidence.

¶ 22 The matter was continued to January 29, 2024. Montez J. failed to appear and presented no evidence. After hearing closing arguments, the trial court took the matter under advisement. On

February 28, 2024, the trial court issued a written ruling that the State had proven by clear and convincing evidence that Montez J. was unfit for the reasons outlined in the petition. More specifically, the trial court stated:

> "The uncontroverted evidence is that [Montez J.] received unsatisfactory ratings on every single service plan. He did nothing. He did not engage in services, nor he did not regularly visit or cooperate with the caseworker. He did, however, engage in the same subterfuge that [Tiffany G.] engaged, actively and successfully hiding his ongoing relationship with [Tiffany G.]. The reason that the children were removed from his care was due to a violent and toxic relationship with [Tiffany G.]. Domestic violence occurred while the children were present. Yet, he not only continued this relationship, but knowingly hid it from caseworkers. [Montez J.] was also incarcerated for a significant period during the alleged nine-month periods. There is no evidence that he made any efforts during his incarceration. The Court finds that the State proved by clear and convincing evidence that [Montez J.] failed to make reasonable efforts and reasonable progress, as alleged in paragraph 10(a) and 10(b) of the Petition for Termination of Parental rights."

¶ 23 A best interest hearing was conducted on April 1, 2024, and Montez J. did not appear. Lesa Marie Jenkins testified for the State. M.J. is her granddaughter, and Montez J. is her son. M.J. has been residing with her since March 2021. Jenkins and M.J. spend a lot of time together. M.J. sometimes calls her "mommy," and other times calls her "Granny Lesa." Jenkins' daughter and other grandchildren reside with her, and they all get along wonderfully with M.J. Jenkins is a marketing host at River City Casino in St. Louis, Missouri. When she is at work, her daughter takes care of M.J. Jenkins ensures that M.J.'s medical care is attended to. She loves M.J. just like her own child, and she is committed to ensuring that all of M.J.'s needs are met. Jenkins believes Montez J.'s parental rights should be terminated, and she can provide a safe place for M.J. to escape the toxic relationship between Montez J. and Tiffany G.

¶ 24 Kent Hollis, a child welfare specialist employed by DCFS, testified next. He was assigned to the present case on June 1, 2023. He has had the opportunity to visit M.J. in Jenkins' home. M.J. is very comfortable in the home and seems to love it there. Mr. Hollis testified that Ms. Jenkins was caring for all M.J.'s needs and opined that Jenkins' home is the best place for M.J.'s

permanency.

¶ 25 On cross-examination, Hollis indicated that he had been unable to inspect Montez J.'s home because he had recently learned that Montez J. had moved. Montez J. had not been in contact with him regarding any changes.

¶ 26 Upon examination by the guardian *ad litem*, Hollis testified that the last time Montez J. visited M.J. was before his incarceration. Hollis further testified that two days after his release from imprisonment, Montez J. and Tiffany G. were in a domestic dispute. The State rested after requesting the trial court to take judicial notice of the best interest report.

¶ 27 Upon Montez J.'s attorney's request, the trial court took judicial notice of the caseworker's testimony from the unfitness proceeding and presented no other evidence. After hearing closing arguments, the trial court found that the State had proven by a preponderance of the evidence that it was in the best interests of M.J. that Montez J.'s parental rights be terminated. Montez J. timely filed a notice of appeal.

¶ 28 II. ANALYSIS

¶ 29 Montez J.'s appointed counsel first concludes that there is no reasonably meritorious argument that the trial court erred in finding Montez J. to be an unfit parent. 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 (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). A finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re M.I.*, 2016 IL 120232, ¶ 21.

¶ 30 Here, the trial court found Montez J. unfit on two grounds. First, the trial court found that Montez J. failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minor from the parent during any nine-month period following adjudication pursuant to section 1(D)(m)(i) of the Act (750 ILCS 50/1(D)(m)(i) (West 2022)). Specifically, the time frames utilized by the State were June 22, 2021, to March 22, 2022, March 23, 2022, to December 23, 2022, and August 23, 2022, to May 23, 2023. Reasonable efforts "is determined by a subjective standard that refers to the amount of effort that is reasonable for that parent. [Citation.] The court must determine whether the parent has made committed and diligent efforts toward correcting the conditions that led to the removal of the minor from the home." *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 44. In the present case, Montez J. put in no effort for the almost two-year pendency of his case. The services he was required to complete included substance abuse, mental health, domestic violence, and parenting. While there was testimony that Montez J. completed some assessments, his service plans were all rated as overall unsatisfactory. Whalen testified that before his incarceration, Montez J. did not maintain contact with her despite her attempts at meeting with him several times. She also proactively assisted him in arranging for services, but Montez J. still did not participate. While he was incarcerated, he did not engage in services. He told his caseworker during that time that he had attended services before his incarceration, but no documents or proof were ever forthcoming. Montez J. presented no valid subjective reason for failing to attend to his services. Not cooperating or attending to any services does not show a "committed and diligent effort toward correcting the conditions." As a result, we cannot say that the trial court's finding that Montez J. failed to make reasonable efforts was against the manifest weight of the evidence.

¶ 31 Second, the trial court found that Montez J. failed to make reasonable progress toward the

return of the minor during the periods of June 22, 2021, to March 22, 2022, March 23, 2022, to December 23, 2022, and August 23, 2022, to May 23, 2023, pursuant to section 1(D)(m)(ii) of the Act (750 ILCS 50/1(D)(m)(ii) (West 2022)).

> "The benchmark for measuring a parent's reasonable progress under section 1(D)(m)(ii) of the Adoption Act includes compliance with service plans and court directives in light of the condition that gave rise to the removal of the child and other conditions that later become known that would prevent the court from returning custody of the child to the parent. [Citation.] Reasonable progress occurs when the trial court can conclude that the progress being made by a parent to comply with the directives given for the return of the minor is sufficiently demonstrable and of such quality that the court would be able to order the child returned to the parent's custody in the near future." *In re S.P.*, 2019 IL App (3d) 180476, ¶ 52.

Here, such a finding cannot be made. Montez J. did not attend to or complete the services in his service plan. While there was some testimony that Montez J. completed an integrated assessment and some additional initial assessments, there was also testimony that the results were not "believable." Further, Montez J. was incarcerated for a period of time, but incarceration is not an excuse for failing to make reasonable progress. See *In re Je. A.*, 2019 IL App (1st) 190467, ¶ 73 (father's personal circumstances of incarceration prevented him from making reasonable progress, which is irrelevant to the objective standard). Montez J. failed to attend to services either before or during incarceration, and all of the service plans were rated unsatisfactory. "Failure to comply with an imposed service plan and infrequent or irregular visitation with the minor may support a finding of unfitness under ground (m)." *In re Jaz. R.*, 2024 IL App (1st) 231947, ¶ 43 (citing *In re Jeanette L.*, 2017 IL App (1st) 161944, ¶ 18). Consequently, we do not find that the trial court's

conclusion that Montez J. failed to make reasonable progress was against the manifest weight of the evidence.

¶ 32 Counsel next concludes that there is no reasonably meritorious argument that the court's finding that terminating Montez J.'s parental rights was in the child's best interests. Once the court determines that a parent is unfit, it must decide whether it is in the minor's best interests to terminate 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 that the minor's best interests justify termination of the parent's rights by a preponderance of the evidence. *Id.* We will not reverse a finding that termination of parental rights is in the child's best interests unless it is contrary to the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1116 (2002).

¶ 33 When determining whether it is in the best interests of a minor to terminate the parental rights of a parent, the trial court takes guidance from section 1-3(4.05) of the Juvenile Court Act, which identifies the best interest factors that must be considered:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
> (b) the development of the child's identity;
> (c) the child's background and ties, including familial, cultural, and religious;
> (d) the child's sense of attachments, including:
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
> (ii) the child's sense of security;
> (iii) the child's sense of familiarity;
> (iv) continuity of affection for the child;
> (v) the least disruptive placement alternative for the child;
> (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 2022).

¶ 34 M.J. is placed with her paternal grandmother and has been there since March 2021. M.J. considers that her home and is extremely well adjusted to living there. She is thriving where she is, and the paternal grandmother appropriately ensures that all M.J.'s needs are met. The trial court found that it was in M.J.'s best interests that Montez J.'s parental rights be terminated. Applying the best interest factors to the evidence presented in this matter, we agree with the trial court and do not find that it was against the manifest weight of the evidence to terminate Montez J.'s parental rights.

¶ 35 III. CONCLUSION

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

¶ 37 Motion granted; judgment affirmed.