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).

2024 IL App (4th) 240848-U

NO. 4-24-0848

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 8, 2024
Carla Bender
4th District Appellate
Court, IL

In re R.M., a Minor,	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Schuyler County
Petitioner-Appellee,	)	No. 22JA4
v.	)	
Kylie M.,	)	Honorable
Respondent-Appellant).	)	Mark L. Vincent,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Zenoff and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment, finding no arguable issue could be raised on appeal.

¶ 2 Respondent, Kylie M., appeals the trial court's order terminating her parental rights as to her son, R.M. (born in 2015). Counsel was appointed to represent respondent on appeal. Counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no arguably meritorious issue to be raised on appeal. We grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On February 9, 2022, the State filed a petition for adjudication of wardship regarding R.M. The petition alleged that R.M. was neglected pursuant to section 2-3(1)(a) of the

Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2022)) in that he was not receiving the proper or necessary support, medical or other remedial care necessary for his well-being. The petition alleged that the Illinois Department of Children and Family Services (DCFS) had received a hotline call stating that respondent was living in "hoarder-like conditions" with her paramour and that they were both suspected drug users. Respondent was not cooperative with the investigation into this report. On February 1, 2022, DCFS advised Dallas W., R.M.'s father, not to allow R.M. to stay with respondent due to the pending investigation. However, on February 7, 2022, Dallas W. was arrested on felony drug charges, and R.M. was in respondent's care at that time. On February 8, 2022, DCFS personnel requested that respondent take a drug test, but she refused.

¶ 5 On February 9, 2022, following a shelter care hearing, the trial court granted temporary custody of R.M. to DCFS.

¶ 6 On April 20, 2022, the trial court entered an order adjudicating R.M. neglected pursuant to the admissions of both parents. On June 29, 2022, the court entered a dispositional order finding it was in R.M.'s best interest that he be made a ward of the court. The court found both parents were unfit and unable to care for R.M. and that placement with either of them would be contrary to R.M.'s best interest. The court granted custody and guardianship of R.M. to DCFS and set the permanency goal as returning home within 12 months. The court ordered that the parents cooperate with DCFS, comply with the terms of the service plan, and correct the conditions which required R.M. to be in care.

¶ 7 Permanency reviews were held on October 26, 2022, and June 5, 2023. At each of the permanency review hearings, the trial court found respondent had failed to make reasonable and substantial progress or reasonable efforts toward returning R.M. home. At the hearing on

June 5, 2023, the court entered an order changing the permanency goal to substitute care pending determination of termination of parental rights.

¶ 8 On June 26, 2023, the State filed a petition to terminate the parental rights of both parents. The petition alleged that respondent was unfit in that she failed to (1) make reasonable efforts to correct the conditions that were the basis for R.M.'s removal during the nine-month period from September 5, 2022, through June 5, 2023 (750 ILCS 50/l(D)(m)(i) (West 2022)); (2) make reasonable progress toward R.M.'s return during the nine-month period from September 5, 2022, through June 5, 2023 (*id.* § l(D)(m)(ii)); and (3) maintain a reasonable degree of interest, concern, or responsibility for R.M.'s welfare (*id.* § 1(D)(b)). The petition alleged that termination of respondent's parental rights was in R.M.'s best interest. Respondent was served by publication with the petition, as neither her attorney nor DCFS personnel had been in contact with her for several months at the time the petition was filed.

¶ 9 On November 27, 2023, a hearing was held on the unfitness portion of the petition to terminate parental rights. Respondent did not appear at the hearing, but her attorney was present.

¶ 10 Samantha Borman testified that she had been R.M.'s caseworker from the start of the case in February 2022 through November 15, 2023. Borman stated that R.M. was six years old when he came into care and he was currently eight years old. She stated DCFS became involved in the case after receiving a call that R.M. was residing with Dallas W. in a home with drugs and he went hungry at various times. R.M. was removed from Dallas W.'s home based on this report, and he could not be placed with respondent because there was another DCFS investigation pending against her. R.M. was currently residing with his paternal grandmother.

¶ 11 Borman testified that, during the time period from September 5, 2022, through June 5, 2023, she had phone contact with respondent on two occasions, but she had no in-person contact with her. Borman last had in-person contact with respondent in August 2022. Respondent did not complete an integrated assessment. Borman arranged for her to complete the assessment via Zoom in April 2022, but respondent failed to attend. When asked if it was possible to reschedule an integrated assessment, Borman replied that was "very hard to get done." Respondent never requested to reschedule the integrated assessment.

¶ 12 Borman developed a service plan, pursuant to which respondent was required to cooperate with DCFS and complete parenting, mental health, and substance abuse services. Borman indicated that respondent was given a copy of the service plan in March 2022. Respondent never met with Borman again to receive updated copies of the service plan, but her service plan never changed during the pendency of the case.

¶ 13 Borman testified that respondent made unsatisfactory progress toward cooperating with DCFS because she did not attend the required meetings with DCFS, failed to provide phone number changes, and failed to "reach out" in response to DCFS requests, like requests for drug drops. She initially signed consents to release information, but she never signed updated consents.

¶ 14 Borman stated that respondent also made unsatisfactory progress in substance abuse services because she failed to complete any drug drops, despite being offered transportation to the drops. Borman notified respondent of the drug drops by sending text messages to the only number respondent had provided her with, and respondent did not reply to the texts during the nine-month period in question. Borman stated that she did not receive

documentation from any provider indicating that respondent was participating in substance abuse treatment during the relevant nine-month period.

¶ 15 Borman testified that respondent made unsatisfactory progress in mental health services because she failed to provide any documentation showing that she was attending any mental health services. At the commencement of the case, she was going to a provider she had established through probation, but DCFS received no documentation concerning mental health services during the relevant nine-month period.

¶ 16 Borman stated that respondent made unsatisfactory progress toward completing parenting education because she failed to complete parenting classes despite being referred three different times. Borman received a report from one of the providers indicating that respondent attended one class and then never attended again.

¶ 17 Borman testified that, during the relevant nine-month period, respondent had one supervised visit with R.M. and she failed to attend the rest of her scheduled weekly visits. The initial provider who supervised the visits canceled them due to respondent's failure to attend, and Borman had to rerefer her. When she was rereferred, the provider called her to set up the visits. Respondent told the provider that the visits offered did not work for her schedule, and she never reached out to set up any new visits. She contacted Borman by phone in February 2023 to tell her that she was living with Dallas W. Respondent also asked how R.M. was doing. That was the last time Borman had contact with her. Borman stated she did not know respondent's current address despite having performed a diligent address search.

¶ 18 The State requested that the trial court take judicial notice of the adjudicatory order, dispositional order, and two permanency review orders.

¶ 19 After hearing arguments, the trial court found respondent was unfit based on all three grounds alleged in the petition. The court found respondent made no efforts to meet any of the goals in the service plan and had offered very little cooperation with DCFS. The court also noted that respondent failed to have visitation with R.M. throughout the period at issue and only spoke with the caseworker twice.

¶ 20 On April 19, 2024, a best-interest report prepared by Jenny Metzroth, a public service administrator with DCFS, was filed. The report stated that respondent failed to participate in an integrated assessment at the beginning of the case. It stated she attended four or five mental health appointments but missed numerous appointments and was discharged due to noncompliance. She failed to complete any drug screenings or parenting classes. She had not visited R.M. in over a year. She had not spoken to DCFS in over a year, and her whereabouts were unknown. The report stated that R.M. had been placed with his paternal grandmother since first being taken into care and was thriving in that placement. The report stated that R.M. was "bonded strongly" with his grandmother and she was willing to provide a permanent home for him. The report recommended that the parental rights of respondent and Dallas W. be terminated so that R.M. could be adopted by his grandmother.

¶ 21 On May 3, 2024, a best-interest hearing was held. Metzroth testified that she had overseen R.M.'s case since May 2022. She stated R.M. had resided with his grandmother since the case was opened in February 2022 and his grandmother was willing to adopt him. R.M.'s grandmother had a job and stable housing, and she provided for R.M.'s basic needs of food, shelter, clothing, medical care, dental care, and education. Metzroth visited R.M.'s grandmother's home on two occasions. The home was free of clutter and obvious safety hazards, and R.M. had his own room. Metzroth stated the last time she was at R.M.'s home, he was

asking for his grandmother's help with his homework and he was "just clearly very comfortable with her being his person." She stated there appeared to be love and affection between R.M. and his grandmother. Metzroth stated she had been told that R.M. calls his grandmother "mom."

¶ 22 Metzroth testified she believed termination of respondent's parental rights was in R.M.'s best interest because R.M. wished to remain with his grandmother, as that was his "safe space." Metzroth noted that neither of R.M.'s parents were able to successfully complete the services necessary to have him returned.

¶ 23 Respondent testified that she was currently in prison, and her projected parole date was in March 2026. She stated that was subject to change because she was getting credit against her sentence for a job she was performing while incarcerated. She was also participating in substance abuse and mental health counseling, and she was on waiting lists for rehab services, domestic violence services, parenting classes, and anger management services. She also planned on obtaining her GED. She stated some of these services would allow her to obtain additional credit against her sentence, and she could possibly be released in early 2025. She stated she wished to complete these services so that she could be a better parent for R.M. and her other children. Respondent testified that she wanted to have a relationship with R.M. She stated she had contacted Borman about resuming visitation with R.M., but R.M.'s grandmother then obtained an order of protection against her, which prevented her from seeing R.M. She could not recall when the order of protection was entered.

¶ 24 After hearing arguments, the trial court found that termination of respondent's and Dallas W.'s parental rights was in R.M.'s best interest because the statutory factors "ha[d] been met." The court noted that R.M.'s grandmother had met his needs and had provided a good placement for him. The court found that R.M. appeared to be thriving in her care. The court

stated it had considered respondent's testimony, and it commended respondent for her engagement in services while incarcerated. The court found, however, that much of respondent's testimony was related to fitness and should have been presented at the fitness hearing.

¶ 25 The trial court entered an order terminating respondent's parental rights, and this appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, appointed appellate counsel has moved to withdraw, stating that she has reviewed the record and has concluded respondent's appeal is without arguable merit. Counsel states she considered arguing that the trial court's unfitness and best-interest determinations were against the manifest weight of the evidence but determined that no meritorious argument can be made as to either of these issues. Counsel alleges she mailed correspondence to respondent but has received no contact from her. Counsel has filed certificates of service indicating she mailed copies of her motion to withdraw and supporting brief to respondent. Respondent has not filed a response.

¶ 28 The procedure for appellate counsel to withdraw set forth in *Anders* applies to findings of parental unfitness and termination of parental rights. *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000). Under this procedure, counsel's motion to withdraw must "be accompanied by a brief referring to anything in the record that might arguably support the appeal." (Internal quotation marks omitted.) *Id.* Counsel must sketch the arguments in support of such issues and explain why counsel believes the arguments are frivolous. *Id.* In cases involving the termination of parental rights, counsel should review both the finding of unfitness and the best-interest determination. *Id.*

¶ 29 A. Unfitness

¶ 30 First, counsel states she considered arguing on appeal that the trial court erred by finding respondent unfit on the ground that she failed to make reasonable progress toward R.M.'s return home during the nine-month period at issue. However, counsel determined that any such argument would be frivolous. For the reasons that follow, we agree.

¶ 31 The involuntary termination of parental rights involves a two-step process and is governed by the Juvenile Court Act and the Adoption Act. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). First, the State must prove by clear and convincing evidence that the parent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *C.W.*, 199 Ill. 2d at 210; see 705 ILCS 405/2-29(2) (West 2022). If the trial court finds the parent unfit, it then considers whether termination of parental rights is in the child's best interest. *C.W.*, 199 Ill. 2d at 210; see 705 ILCS 405/2-29(2) (West 2022).

¶ 32 Section 1(D) of the Adoption Act (750 ILCS 5/1(D) (West 2022)) sets forth several grounds upon which a parent may be deemed unfit. Section 1(D)(m)(ii) of the Adoption Act (*id.* § 1(D)(m)(ii)) provides that one such ground is a parent's failure "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 minor." "[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006).

> "If a service plan has been established *** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then *** 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her

> obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication." 750 ILCS 50/1(D)(m)(ii) (West 2022).

Our supreme court has held:

> "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

¶ 33 A trial court's determination that parental unfitness has been established by clear and convincing evidence will not be disturbed on appeal unless that determination is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). "A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Id.*

¶ 34 Here, the evidence at the unfitness hearing showed that, during the relevant nine-month period, respondent failed to complete any of the services required of her under the service plan. Borman testified that respondent was referred to parenting classes three times, but she only attended one class and never returned. Respondent began receiving mental health services at the beginning of the case, but she failed to provide DCFS with any documentation showing she received mental health services during the relevant nine-month period. During the relevant nine-month period, respondent failed to attend any requested drug drops, contacted

Borman only two times, and attended only one visit with R.M. Accordingly, we agree with counsel that there is no arguably meritorious claim to be made that the trial court's determination that respondent was unfit due to her failure to make reasonable progress toward R.M.'s return was against the manifest weight of the evidence.

¶ 35 Counsel also asserts that there is no nonfrivolous argument to be made that the trial court erred by finding that respondent was unfit on the grounds of failure to make reasonable efforts to correct the conditions that led to R.M.'s removal or failure to maintain a reasonable degree of interest, concern, or responsibility for R.M.'s welfare. However, we need not address these additional grounds for unfitness, as we have found that the trial court did not err by determining that respondent was unfit based on her failure to make reasonable progress. See *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000) ("[O]n review, if there is sufficient evidence to satisfy any one statutory ground we need not consider other findings of parental unfitness.").

¶ 36 B. Best Interest

¶ 37 Appointed counsel asserts that she also considered arguing that the trial court's determination that termination of respondent's parental rights was in R.M.'s best interest was against the manifest weight of the evidence but concluded that such an argument would be frivolous. We agree.

¶ 38 "At the best-interest portion of a termination hearing, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest." *In re J.B.*, 2019 IL App (4th) 190537, ¶ 31. At this stage, the focus shifts from the parent to the child, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)) provides that, when a

best-interest determination is required, the trial court must consider several enumerated factors in the context of the child's age and developmental needs. These factors include:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072.

See 705 ILCS 405/1-3(4.05) (West 2022).

¶ 39 We will reverse a trial court's best-interest determination only if it is against the manifest weight of the evidence. *J.B.*, 2019 IL App (4th) 190537, ¶ 33.

¶ 40 Here, the trial court's best-interest determination was not against the manifest weight of the evidence. The evidence showed that R.M.'s physical safety and welfare, the development of his identity, his sense of attachments, and his need for permanence were all served by termination of respondent's parental rights. The evidence showed that R.M. had been residing with his grandmother for over two years, she provided for all of his basic needs, he wished to stay with her, and she was willing to adopt him. Metzroth testified that R.M. was "clearly very comfortable with her being his person," and she had been told that R.M. had begun to call his grandmother "mom." Respondent had not visited R.M. in over a year at the time of the best-interest hearing. While respondent testified that she was completing services in prison and

wished to have a relationship with R.M., the evidence showed she had little to no relationship with him at the time of the best-interest hearing.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 43 Affirmed.