2025 IL App (4th) 241431-U

NO. 4-24-1431

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 6, 2025
Carla Bender
4th District Appellate
Court, IL

| | | |
|---|---|---|
| *In re* C.C., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Tazewell County |
| Petitioner-Appellee, | ) | No. 22JA154 |
| v. | ) | |
| Christopher C., | ) | Honorable |
| Respondent-Appellant). | ) | Timothy J. Cusack, |
| | ) | Judge Presiding. |

JUSTICE GRISCHOW delivered the judgment of the court.
Justices DeArmond and Cavanagh 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, Christopher C., appeals from the trial court's judgment finding him unfit and terminating his parental rights as to the minor child, C.C. (born July 2022). The court also terminated the parental rights of C.C.'s mother, Candace D., who is not a party to this appeal. Respondent timely appealed, and the court appointed counsel to represent him.

¶ 3 Appellate counsel now moves to withdraw pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967). See *In re S.M.*, 314 Ill. App. 3d 682, 685-86 (2000) (holding *Anders* applies to termination of parental rights cases and outlining the proper procedure appellate counsel should follow when moving to withdraw). In his supporting brief, counsel

contends any argument that might be made in this case would be meritless. Respondent was given notice that he had the opportunity to respond to the motion to withdraw, but he did not file a response. For the reasons that follow, we grant the motion to withdraw and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 On July 21, 2022, a shelter care petition was filed, alleging C.C. was a neglected minor in that his environment was injurious to his welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2022)) because respondent was found unfit in "Tazewell County Case Numbers 2021 JA 228, 2019 JA 319, 2019 JA 318 and 2019 JA 280 and there is no subsequent finding of fitness and [respondent] has not completed services to restore him to fitness." The same day, a temporary custody order was entered by the trial court, finding an immediate necessity to remove C.C. from the home, making him a ward of the court, and placing his guardianship with the Illinois Department of Children and Family Services (DCFS).

¶ 6 Respondent failed to appear for a September 8, 2022, hearing and was defaulted. The arraignment order noted respondent was not incarcerated at that time. The same day, the trial court entered an adjudicatory order finding by a preponderance of the evidence C.C. was neglected.

¶ 7 According to the dispositional order entered on October 6, 2022, respondent failed to appear again and was found unfit because he was deemed unfit in prior juvenile cases and because he had not engaged in required services. The petition was granted, C.C. was made a ward of the court, and he was placed in the custody of DCFS. The order also provided for supervised visits for respondent. A supplemental task order was entered, requiring respondent to undergo, comply with, and successfully complete a psychiatric examination, a substance abuse assessment

and recommended treatment, counseling, and domestic violence classes and to submit at least two times a month to random testing for alcohol and/or drugs.

¶ 8 On September 5, 2023, the State filed a petition for the termination of the parental rights of both parents. The petition alleged respondent was depraved as defined in section 1(i) of the Adoption Act (750 ILCS 50/1(i) (West 2022)), in that he had been convicted of at least three felonies and at least one of the convictions occurred within five years of the filing of the petition to terminate parental rights. The following felony convictions were listed in the petition:

> "1. 22-CF-580, Ret Theft/Dispo Merch/>$300 (Class 3), Tazewell County, 2 years DOC;
>
> 2. 22-CF-580, Possession of Meth<5 Grams (Class 3), Tazewell County, 2 years DOC;
>
> 3. 22-CF-8, Poss Amt Con Sub Except (A)/(D)(Class 4), Tazewell County, 1 years DOC;
>
> 4. 21-CF-409, Possession of Meth<5 Grams (Class 3), Tazewell County, 2 years DOC;
>
> 5. 20-CF-710, Theft/Disp Merch/<$300/PrevConv (Class 4), Tazewell County, 2 years DOC;
>
> 6. 14-CF-82, Meth Precursor<15 Grams (Class 2), Tazewell County, 3 years DOC;
>
> 7. 14-CF-483, Violation of an Order of Protection (Class 4), Tazewell County, 1 year DOC;
>
> 8. 08-CF-293, Poss Amt Con Sub Except (A)/(D)(Class 4), Tazewell County, 18 months DOC;

9. 06-CF-401, Theft/Con/Prior Conv<300 (Class 4), Tazewell County 3 years DOC;

10. 05-CF-82, Theft/Second Offense (Class 4), Tazewell County, 12 months DOC;

11. 04-CF-264, Poss Amt Con Sub Except (A)/(D)(Class 4), Tazewell County, years DOC;

12. 02-CF-509, Theft (Class 4), Tazwell County, 2 years DOC;

13. 01-CF-274, Violate Order of Protection 2nd+(Class 4), Tazwell County, 18 months DOC."

¶ 9 Respondent was transferred to the custody of the Illinois Department of Corrections (DOC) on October 10, 2022. The record reflects a summons was issued for respondent to appear on September 21, 2023, for the hearing on the State's petition, but there is no indication he was served with the summons. On September 21, 2023, an arraignment order shows respondent appeared via Zoom from DOC and was represented by counsel, who was present in the courtroom. The order indicates respondent was served "via zoom" and the matter was continued to October 12, 2023, to allow respondent time to answer.

¶ 10 On October 12, 2023, the trial court entered an arraignment order reflecting respondent appeared via Zoom from DOC and was represented by counsel, who was again present in person. Through his attorney, respondent filed an answer to the termination petition the same day, in which he neither admitted nor denied the allegations in the petition. The order indicated respondent made a voluntary stipulation to the petition and scheduled a prove-up and best-interest hearing for January 11, 2024.

¶ 11 After several continuances due to various reasons, respondent was present in person with his attorney on October 3, 2024, at the unfitness prove-up and best-interest hearing. The State offered certified copies of respondent's prior felony convictions, which were admitted into evidence without objection. The State proffered it would call caseworker Michelle White, who would testify respondent did not complete any court-ordered services. The trial court took judicial notice of this fact, and respondent had no objection. After considering the pleadings on file and the State's proffer, the court found the allegations in the petition had been proven by clear and convincing evidence.

¶ 12 The trial court proceeded to the best-interest portion of the termination proceedings. All parties acknowledged they had received copies of the best-interest reports filed on January 8, 2024, and March 12, 2024, and the addendum filed on August 1, 2024.

¶ 13 The State presented evidence through White and C.C.'s foster mother, Melissa H. The trial court took judicial notice of the fact respondent had not completed any services that were court-ordered in the dispositional order.

¶ 14 The State called White as its first witness. White testified C.C. had been placed with the foster mother since his birth in July 2022. White testified she had been the caseworker for two years and visited the foster home three times a month. She testified C.C. seeks comfort from his foster mother and they have a parent/child relationship. White explained C.C. has a positive relationship with the three teenagers who live in the home; the home is clean and appropriate; C.C. has appropriate food, clothing, and toys; he has a pediatrician; and his foster mother works from home so she can be a full-time caregiver. C.C.'s foster mother tries to maintain contact between C.C. and his nine other siblings, all of whom are in foster care.

¶ 15 White reported respondent had not had any visitation with C.C. since she had been

the caseworker, as respondent had been incarcerated the entire time. Visits had been scheduled but were canceled for various reasons. White had attempted to schedule visits with the prison by leaving messages but never received return phone calls. On cross-examination by Debbie Harper, the guardian *ad litem*, White stated she did not have any contact with respondent in 2024. Further, White stated she did not receive any cards, letters, or gifts from respondent for C.C. in 2023 or 2024.

¶ 16 The State next called C.C.'s foster mother, Melissa. Melissa stated C.C. has been in her care since he was released from the hospital at birth, and that she also has three teenagers in her home (14, 15, and 16 years old). Melissa testified she provided C.C. with his own room in their home. The foster home is clean, and C.C. has toys and everything he needs. Melissa stays home with C.C., works with him, and sees that all his medical needs are met. Melissa expressed the desire to adopt C.C. if he were available for adoption.

¶ 17 Respondent testified he had not visited C.C. since being incarcerated on October 10, 2022. Respondent stated he was close to completing the nine-month drug program on October 24, 2024. He also completed the parenting program and Narcotics Anonymous/Alcoholics Anonymous classes since being incarcerated. Respondent explained he had two visits with C.C. at a public library prior to being incarcerated. Respondent admitted knowing C.C. was in foster care with Lutheran Social Services of Illinois and that he had the ability to write letters while incarcerated, but he did not send anything to C.C.

¶ 18 Harper gave a brief report, indicating that she had met with C.C. and his foster mother in her office, that the foster mother was doing a "phenomenal job" with C.C., that they are "extremely bonded," that the minor is doing "amazing," and that the foster mother meets all C.C.'s needs and advocates for him when necessary.

¶ 19 The trial court found the State had established by a preponderance of the evidence that termination of respondent's parental rights was in C.C.'s best interests. The court acknowledged that C.C. had been in foster care "basically his whole life" and was "thriving there." Following the court's consideration of all the best-interest reports and addendum, the arguments of counsel, and the best-interest factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)), it was clear to the court that respondent's parental rights should be terminated and the permanency goal should be changed to adoption.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, appointed appellate counsel has moved to withdraw pursuant to *Anders* and argues that respondent's appeal presents no potentially meritorious issue for review. See *S.M.*, 314 Ill. App. 3d at 685-86. Counsel indicates that he has reviewed the record and concluded respondent's appeal is without arguable merit. Along with his motion to withdraw, counsel filed a certification indicating he had mailed a copy of his motion to withdraw and brief in support to respondent. Respondent has not filed a response.

¶ 23 Counsel indicates he has reviewed the record and found three possible issues of error: (1) whether respondent was denied due process by not being personally served with the petition for termination of his parental rights, (2) whether the trial court's finding of unfitness was against the manifest weight of the evidence, and (3) whether the court's best interests finding was against the manifest weight of the evidence. Counsel has determined that no meritorious argument can be made as to any of these issues.

¶ 24 A. Personal Jurisdiction

¶ 25 Although counsel refers to the first potential issue of error as a due process claim,

his argument is more appropriately deemed a matter of personal jurisdiction. "Personal jurisdiction is the court's power 'to bring a person into its adjudicative process.' " *In re M.W.*, 232 Ill. 2d 408, 415 (2009) (quoting Black's Law Dictionary 870 (8th ed. 2004)). Personal jurisdiction is a matter of statutory interpretation. *Id.* at 427. For juvenile petitions alleging a minor is abused, neglected, or dependent, "[p]arties respondent are entitled to notice in compliance with Sections 2-15 and 2-16" of the Juvenile Court Act. 705 ILCS 405/1-5(3) (West 2022). "When a petition is filed, the clerk of the court shall issue a summons with a copy of the petition" attached "to the minor's legal guardian or custodian and to each person named as respondent in the petition." *Id.* § 2-15(1). The summons must be properly served by any county sheriff, coroner, or probation officer in accordance with section 2-15(5) of the Juvenile Court Act. *Id.* § 2-15(5). Methods of service include leaving a copy: (1) with the person summoned, (2) at the place of their abode under certain circumstances, and (3) with the guardian or custodian of a minor. *Id.* However, the appearance of the minor's legal guardian, custodian, or any person named in the petition in any proceeding under the Juvenile Court Act "shall constitute a waiver of service of summons and submission to the jurisdiction of the court" unless an objection to personal jurisdiction (pursuant to section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301 (West 2022))) is filed at that time. 705 ILCS 405/2-15(7) (West 2022).

¶ 26 Here, there is no indication that summons was personally served upon respondent; however, the record reflects he was served with the petition "via zoom," with counsel present. Thereafter, respondent appeared twice by Zoom and in person three times. Respondent was personally present at the prove-up and best-interest hearings. Respondent was represented by counsel at all court appearances. Because respondent appeared in these proceedings and did not challenge the court's personal jurisdiction, he waived service of summons pursuant to section 2-

15(7) of the Juvenile Court Act (*id.*).Having reviewed the record, we agree with appellate counsel any challenge on this basis would be without arguable merit.

¶ 27 B. Fitness Determination

¶ 28 Counsel indicates he considered whether the trial court's unfitness finding was against the manifest weight of the evidence but concluded that such an argument would be without merit. We agree.

¶ 29 The State must prove unfitness as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)) by clear and convincing evidence. *In re N.G.*, 2018 IL 121939, ¶ 28. One of the grounds for parental unfitness set forth in the Adoption Act is depravity. 750 ILCS 50/1(D)(i) (West 2022)). While the Act does not define "depravity," our supreme court has held that "depravity is an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *In re Abdullah*, 85 Ill. 2d 300, 305 (1981).

> "Depravity must be shown to exist at the time of the petition to terminate parental rights, and the acts constituting depravity *** must be of sufficient duration and of sufficient repetition to establish a 'deficiency' in moral sense and either an inability or an unwillingness to conform to accepted morality." (Internal quotation marks omitted.) *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005).

It is the State's burden to prove by clear and convincing evidence that the respondent is depraved. *In re L.J.S.*, 2018 IL App (3d) 180218, ¶ 18.

¶ 30 Having several felony convictions may be sufficient to establish depravity. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). While the legislature has not stated what number and magnitude of offenses are sufficient for a finding of depravity, it has specified the number and

magnitude of convictions that create a rebuttable presumption of depravity. *Id.* Relevant to this appeal, section 1(D)(i) of the Adoption Act provides:

> "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2022).

Because the presumption of depravity set forth in the statute is rebuttable, "a parent is still able to present evidence showing that, despite his convictions, he is not depraved." *J.A.*, 316 Ill. App. 3d at 562. "Rehabilitation can only be shown by a parent who, upon leaving prison, maintains a lifestyle suitable for parenting children safely." *In re J.V.*, 2018 IL App (1st) 171766, ¶ 183.

¶ 31 "A rebuttable presumption creates a *prima facie* case as to the particular issue in question and thus has the practical effect of requiring the party against whom it operates to come forward with evidence to meet the presumption." (Internal quotation marks omitted.) *J.A.*, 316 Ill. App. 3d at 562. Once evidence opposing the presumption is introduced, "the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." *Id.* "The only effect of the rebuttable presumption is to create the necessity of evidence to meet the *prima facie* case created thereby, and which, if no proof to the contrary is offered, will prevail." *Id.* at 563.

¶ 32 A determination of parental unfitness involves factual findings and credibility determinations that the trial court is in the best position to make because "the trial court's

opportunity to view and evaluate the parties *** is superior." (Internal quotation marks omitted.) *In re M.I.*, 2016 IL 120232, ¶ 21. " 'The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent[,] and the reviewing court will give such a determination deferential treatment.' " *J.V.*, 2018 IL App (1st) 171766, ¶ 184 (quoting *J.A.*, 316 Ill. App. 3d at 563). A court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *N.G.*, 2018 IL 121939, ¶ 29. A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Id.*

¶ 33 Here, the State presented evidence that respondent had previously been convicted of 13 felonies, 4 of which took place within five years of the filing of the petition, which created a rebuttable presumption of depravity. See 750 ILCS 50/1(D)(i) (West 2022). To rebut this presumption, respondent presented his own testimony that he only saw C.C. twice before being incarcerated. Once incarcerated, respondent made no effort to communicate with or see C.C.

¶ 34 Even assuming for the sake of argument respondent's testimony was sufficient to rebut the presumption of depravity created by his criminal history, the trial court found that the State established by clear and convincing evidence respondent had no contact with C.C. since being incarcerated. The State's evidence showed that respondent had 13 felony convictions for theft, violation of orders of protection, and drug-related offenses, the oldest of which was entered in 2001. His most recent felony convictions, which were for retail theft, possession of methamphetamine, and possession of a controlled substance, were all entered in 2022, and respondent received a sentence of two years in prison for two of the cases and one year for the other. At the time of the termination hearing, respondent was still serving his sentences.

¶ 35 The State's evidence, taken as a whole, showed that respondent has a long history of criminal offenses that negatively impacted his relationship with C.C. Respondent appeared to

be unwilling or unable to conform his conduct to an acceptable level of morality, as he continued to possess illicit substances, including methamphetamine, and continued to commit felony offenses. Moreover, respondent offered only his own testimony as evidence that he was not depraved, and the trial court was not required to accept such testimony as credible.

¶ 36 Here, the record established depravity due to the number of felony convictions within the last five years. The record also reveals respondent failed to engage in any court-ordered services. Under these circumstances, we agree with counsel that there is no meritorious argument to be made that the trial court's determination that respondent was unfit was against the manifest weight of the evidence, as the opposite conclusion is not clearly apparent. See *N.G.*, 2018 IL 121939, ¶ 29.

¶ 37 C. Best-Interest Determination

¶ 38 Counsel also indicates that he considered arguing that the trial court's determination that termination of respondent's parental rights was in C.C.'s best interest was against the manifest weight of the evidence but concluded that such an argument would be without merit. We agree.

¶ 39 After a parent is determined to be unfit, the trial court "proceed[s] to consider the child's best interests and whether those interests would be served by the child's adoption by the petitioners, requiring termination of the natural parent's parental rights." *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). At this point, 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." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *Id.*

¶ 40 In determining whether termination of parental rights is in a minor's best interest, the trial court must consider the following factors within the context of the child's age and developmental needs:

> "(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 longterm 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." (Internal quotation marks omitted.) *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 52; see 705 ILCS 405/1-3(4.05) (West 2022).

¶ 41 "We will not disturb a [trial] court's finding that termination is in the children's best interest unless it was against the manifest weight of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). "A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 42 Here, C.C. had been with his foster mother since he left the hospital at two days old. His foster mother has been a consistent, loving, and nurturing parental figure since C.C. came into her care. C.C. is developmentally on target and has no significant medical needs. C.C.'s foster

mother provides for all his needs. C.C. is bonded with his foster mother, and she wants to provide permanency for him. By comparison, respondent has had no communication or visits with C.C. since being incarcerated on October 10, 2022. Moreover, respondent has a lengthy criminal history, with four felony convictions within the last five years. We also note respondent did not present any evidence concerning the best interest of C.C., and the caseworker testified that C.C. was thriving in his foster home. Accordingly, we conclude the trial court's determination that it was in C.C.'s best interest that respondent's parental rights be terminated and C.C.'s permanency goal be changed to adoption was overwhelmingly supported by the evidence.

¶ 43 Based on this record, we agree with appellate counsel that there is no meritorious argument to be made that the trial court's best interest finding was against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

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

¶ 46 Affirmed.