2025 IL App (4th) 250176-U

NO. 4-25-0176

FILED
June 3, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re M.G., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	No. 23JA374
v.	)	
Benjamin G.,	)	Honorable
Respondent-Appellant).	)	Francis M. Martinez,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Lannerd and DeArmond 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, Benjamin G., appeals from the trial court's order terminating his parental rights with respect to his daughter, M.G. (born December 2020). 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 October 16, 2023, the State filed a petition for adjudication of wardship concerning M.G., which named respondent as her putative father. The petition alleged that M.G.

was neglected in that she was in an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2022)) due to the following: (1) her mother had mental health issues that prevented her from properly parenting, (2) her father had mental health issues that prevented him from properly parenting, and (3) M.G. "gave a[n Illinois Department of Children and Family Services (DCFS)] intact [supervisor] a bag of marijuana that was accessible to [her], thereby placing [her] at a risk of harm."

¶ 5 The trial court held a shelter care hearing that same day. The court entered an order adjudicating respondent the father of the minor pursuant to an "Admission of Parentage/Judgment of Parentage" order entered in a separate family case. The court also found there was probable cause to believe that M.G. was neglected, and it granted temporary guardianship and custody of M.G. to DCFS.

¶ 6 On January 8, 2024, the trial court entered an order adjudicating M.G. neglected as to all three counts alleged in the petition. That same day, the court entered a dispositional order finding that respondent was unfit or unable to care for, protect, train, or discipline M.G., or was unwilling to do so; appropriate services aimed at family preservation and reunification had been unsuccessful; and it was in M.G.'s best interest to take her from respondent's custody. The court ordered that M.G. be made a ward of the court.

¶ 7 On December 26, 2024, DCFS filed a best-interest report concerning M.G. The report stated that M.G. had resided in a traditional foster home since October 2023. According to the report, M.G. was attached to all members of her foster family, and her medical, physical, and developmental needs were being met there. M.G.'s foster family was willing to maintain ties with M.G.'s biological family when it was safe and appropriate to do so. The report stated M.G. viewed her foster parents as her parents and turned to them for comfort and aid. The report

indicated that M.G.'s foster parents provided a stable and consistent environment for her and were willing to adopt her.

¶ 8 On January 24, 2025, the State filed a motion for termination of respondent's parental rights, which alleged respondent was unfit in that he (1) failed to make reasonable efforts to correct the conditions that were the basis for M.G.'s removal during a nine-month period after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2022)), (2) failed to make reasonable progress toward M.G.'s return during a nine-month period after the adjudication of neglect (*id.* § 1(D)(m)(ii)), and (3) was depraved (*id.* § 1(D)(i)). With regard to the first two grounds for unfitness, the motion stated the nine-month periods at issue were January 8, 2024, through October 8, 2024, and March 11, 2024, through December 11, 2024. The motion alleged that termination of parental rights was in M.G.'s best interest.

¶ 9 On February 13, 2025, Court Appointed Special Advocates (CASA) filed a best-interest report. The report stated that CASA had observed that M.G.'s foster family consistently provided her with adequate food, clothing, and shelter, and they ensured all her medical needs were met. CASA had observed bonding between M.G. and both of her foster parents, who appeared to show her unconditional love, provided a safe and loving environment, and disciplined her appropriately. The report stated M.G. had a "visible fear" of respondent, which was "evident in observable trigger behaviors after each visit." The report stated that M.G.'s foster parents were willing to adopt her and opined that this would be in M.G.'s best interest.

¶ 10 On February 21, 2025, the trial court held a hearing on the motion for termination of parental rights. At the State's request, the court took judicial notice of, *inter alia*, the temporary custody order, the adjudicatory order, the dispositional order, and two permanency

review orders. The court also admitted into evidence certified copies of convictions for four felony offenses committed by respondent. These included a 2011 conviction for unlawful possession of a controlled substance, a 2018 conviction for aggravated driving under the influence of alcohol, and two 2024 convictions for violating an order of protection.

¶ 11 Initially, respondent, who was incarcerated at the time of the hearing, was present virtually. However, shortly after DCFS caseworker Bethany Dunaj began testifying, the trial court stated that respondent had summoned a correctional officer and "absented himself from the Zoom session." The court stated that respondent "apparently [did] not wish to participate any longer" and proceeded with the hearing.

¶ 12 Dunaj testified that she was assigned to M.G.'s case in October 2024. Though she was not assigned to the case when M.G. first came into care, she had reviewed the notes and documents from previous caseworkers. Dunaj indicated that M.G. came into care because she was neglected due to respondent's mental illness. A copy of the integrated assessment from the case file was admitted into evidence. Three service plans—dated November 6, 2023, March 26, 2024, and September 26, 2024—were also admitted into evidence.

¶ 13 Dunaj testified that respondent was directed to cooperate with DCFS, "complete toxicology," complete drug drops, engage in mental health services, attend visits with M.G., and complete parenting classes. Dunaj stated respondent had not consistently communicated with DCFS. Dunaj attempted to contact respondent by completing diligent searches, mailing letters, and making phone calls. She communicated with him in November 2024 while he was residing in a mental health facility, but she had not spoken to him since. Dunaj stated that it appeared from the contents of the file that the prior caseworker had inconsistent communication with respondent as well. Dunaj indicated respondent had been informed that he needed to complete

services and of the importance of doing so.

¶ 14 Dunaj testified that DCFS had mental health concerns regarding respondent. She noted that when she spoke with him in November 2024, he was confined to a mental health facility, where "they were working on his mental health so that he would be considered fit to stand trial" in a criminal case. Dunaj stated that respondent had not successfully completed any of the mental health services assigned by DCFS since the case was opened. Respondent also failed to complete a substance abuse assessment or any requested drug drops.

¶ 15 Dunaj testified that DCFS had concerns about respondent's ability to parent due to his mental health. She was unable to refer him to a parenting class because he failed to complete mental health services and demonstrate his mental health stability. He also failed to provide any documentation demonstrating sobriety, and parenting classes would not accept individuals who had not shown a period of sobriety. Respondent did not attend his weekly visitation with M.G. regularly. He last visited M.G. in April 2024, at which time the visits had to be stopped due to his mental instability.

¶ 16 Dunaj testified that, to complete services, respondent still needed to cooperate with DCFS, "get to the point where [he could] have regular, routinely scheduled visitation," complete mental health services, complete a substance abuse assessment, and complete a domestic violence assessment and any services recommended as a result. Dunaj testified that DCFS had concerns about respondent's ability to safely parent M.G. because he was currently incarcerated and had not completed any services recommended to mitigate the concerns that brought M.G. into care.

¶ 17 The trial court found the State had proven by clear and convincing evidence that respondent failed to make reasonable efforts to correct the conditions that were the basis for

M.G.'s removal and failed to make reasonable progress toward her return. The court found the testimony and the service plans showed that respondent failed to engage in any of the recommended services and, consequently, made no efforts or progress. The court also found the State proved by clear and convincing evidence that respondent was unfit on the basis of depravity, as it offered evidence that respondent had been convicted of four felony offenses, two of which occurred within the last five years.

¶ 18 The matter immediately proceeded to a best-interest hearing. At the State's request, the trial court took judicial notice of the unfitness proceedings, the best-interest report filed by DCFS on December 26, 2024, and the best-interest report filed by CASA on February 13, 2025. At the request of the guardian *ad litem*, the court also considered a report from M.G.'s current caregiver.

¶ 19 After considering the evidence, the trial court found termination of respondent's parental rights was in M.G.'s best interest. The court stated respondent had failed to engage in any services "that would make him anywhere near fit to be a parent," and he was unavailable to parent. The court found that, based on the reports and the caregiver's statement, M.G. had fully integrated into her foster family and considered her foster parents to be her parents. The court stated that M.G.'s foster family had "clearly nurtured her," and she had "clearly grown." The court found that it would not be in M.G.'s best interest to "continue this matter any further."

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

¶ 21 II. ANALYSIS

¶ 22 On appeal, appointed appellate counsel has moved to withdraw, stating that he has reviewed the record and has concluded that no nonfrivolous grounds for appeal exist. Counsel

states he 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 has filed a certificate of service indicating he mailed a copy of his motion to withdraw and supporting brief to respondent. Respondent has not filed a response.

¶ 23 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.*

¶ 24 A. Unfitness

¶ 25 Counsel asserts that he considered arguing that the State failed to prove respondent was unfit as to the three grounds alleged in the motion for termination of parental rights but concluded that no meritorious argument could be made as to any of the three grounds upon which the trial court found respondent unfit. We agree.

¶ 26 The involuntary termination of parental rights is governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2022)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2022)), and it involves a two-step process. See *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).

¶ 27 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)) sets forth several grounds upon which a parent may be deemed unfit, one of which is depravity (*id.* § 1(D)(i)). 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). It is the petitioner'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.

¶ 28 Having several felony convictions may be sufficient to establish depravity, and the legislature has specified the number and seriousness of the convictions that create a rebuttable presumption of depravity. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2022)) provides, in relevant part:

> "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."

¶ 29 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. "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.

¶ 30 "[A] trial court's finding that a parent is unfit under section 1(D) of the Adoption

Act will not be reversed on appeal unless that finding is against the manifest weight of the evidence." *In re N.G.*, 2018 IL 121939, ¶ 29. A court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 31 Here, the State presented evidence that respondent had four prior felony convictions, two of which occurred within five years of the filing of the motion for termination of parental rights. Respondent presented no evidence to rebut the State's *prima facie* case, and, accordingly, the statutory presumption of depravity prevails. See *J.A.*, 316 Ill. App. 3d at 563. Thus, we agree with counsel that there is no nonfrivolous argument to be made that the trial court's finding of unfitness on the ground of depravity was against the manifest weight of the evidence.

¶ 32 Having found the trial court's finding of unfitness on the ground of depravity was not against the manifest weight of the evidence, we need not address the other grounds of unfitness alleged in the motion for termination of parental rights. See *C.W.*, 199 Ill. 2d at 217 ("Although the State may rely on several grounds in its petition, a finding adverse to the parent on any *one* ground is sufficient to support a subsequent termination of parental rights." (Emphasis in original.)). However, we also agree with counsel's conclusion that no nonfrivolous argument could be made that the court erred by finding respondent unfit based on the grounds of failing to make reasonable efforts to correct the conditions that were the basis for M.G.'s removal (750 ILCS 50/1(m)(i) (West 2022)) or failing to make reasonable progress toward her return (*id.* § 1(m)(ii)) during the nine-month periods at issue. The State's evidence showed that respondent had made virtually no efforts or progress, as he failed to engage in any of the recommended services or cooperate with DCFS.

¶ 33 B. Best Interest

¶ 34 Counsel indicates he also considered arguing that the trial court's finding that termination of respondent's parental rights was in M.G.'s best interest was against the manifest weight of the evidence and that the court did not adequately and affirmatively state which statutory factors it considered in rendering its decision. However, counsel concluded that such an argument would be without arguable merit.

¶ 35 "At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of respondent's parental rights is in the child's best interest." *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 52. In making such a determination, the trial court must consider several enumerated statutory factors in the context of the child's age and developmental needs, including (1) the physical safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachments, (5) the child's wishes and long-term goals, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of every family and child, (9) the risks attendant to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2022).

¶ 36 However, "the trial court's best-interests determination need not contain an explicit reference to each of these factors, and we need not rely on any basis relied upon by the trial court in affirming its decision." *In re Ca. B.*, 2019 IL App (1st) 181024, ¶ 31; see *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004) ("[T]he trial court need not articulate any specific rationale for its decision, and a reviewing court may affirm the trial court's decision without relying on any basis used by the trial court."). We will not disturb the court's best-interest determination unless it was against the manifest weight of the evidence. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 37 Here, while the trial court did not explicitly address each of the statutory factors in making its best-interest determination, it noted that the evidence showed that M.G. had fully integrated into her foster family, her foster family had nurtured her, and she considered them to be her parents. This was relevant to M.G.'s physical safety and welfare, the development of her identity, and her sense of attachments. See 705 ILCS 405/1-3(4.05)(a), (b), (d) (West 2022). The court also found that respondent was unavailable to parent and was not close to achieving fitness, findings which were relevant to M.G.'s need for permanence. *Id.* § 1-3(4.05)(g). The evidence submitted at the best-interest hearing supported the trial court's findings, as it showed that M.G. had been in the care of her foster family for over a year, she had thrived and grown in their care, she considered them her parents, and they wished to adopt her. The evidence also showed that respondent failed to engage in the recommended services to address his mental health problems during the pendency of the case and had not visited M.G. since April 2024, when DCFS stopped all visits due to his mental instability. Based on the foregoing evidence, we agree with counsel that an argument that the trial court's best-interest determination was against manifest weight of the evidence would be meritless.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.