2025 IL App (4th) 250282-U

NO. 4-25-0282

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 11, 2025
Carla Bender
4th District Appellate
Court, IL

In re T.D., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	No. 21JA293
v.	)	
Terrance D.,	)	Honorable
Respondent-Appellant).	)	David A. Brown,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Harris and Justice Vancil concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted counsel's motion to withdraw and affirmed the trial court's judgment terminating respondent's parental rights, as no nonfrivolous issue could be raised on appeal.

¶ 2 Respondent, Terrance D., appeals from the trial court's judgment finding him unfit and terminating his parental rights to his minor child, T.D. Respondent's counsel now seeks 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 following when moving to withdraw). In his supporting brief and memorandum, counsel contends that he cannot offer a nonfrivolous argument in support of respondent's appeal. For the following reasons, we grant counsel's motion to withdraw and affirm the court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Juvenile Neglect Petition and Dispositional Hearing

¶ 5 On July 29, 2021, the State filed a petition alleging that T.D. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2020)) in that his environment was injurious to his welfare. The petition alleged that T.D. was born in July 2021 and at the time of T.D.'s birth, T.D.'s mother (1) admitted to hospital staff that she previously used methamphetamine, cocaine, and alcohol, (2) tested positive for amphetamines and tetrahydrocannabinol (THC), and (3) reported to an Illinois Department of Children and Family Services (DCFS) investigator that she used THC and alcohol on the day of her delivery, used methamphetamine "every now and then," and used cocaine "until she found out she was pregnant." T.D.'s mother was also previously indicated by DCFS in 2018 and found unfit in 2020, with no subsequent finding of fitness. Respondent, T.D.'s putative father, had a criminal history that included felonies for unlawful possession of crack cocaine with the intent to distribute and manufacturing/distributing cocaine.

¶ 6 Following a shelter care hearing, the trial court entered an order on July 30, 2021, placing T.D. in the temporary custody of DCFS with the right to place. After paternity testing established that respondent was T.D.'s father, respondent stipulated to the allegations in the juvenile neglect petition.

¶ 7 On November 23, 2021, the trial court held an adjudicatory hearing at which the court found T.D. was neglected. Immediately thereafter, the court entered an order withholding a fitness finding with respect to respondent. The court made T.D. a ward of the court and named the guardianship administrator of DCFS as the guardian of T.D., with the right to place. The court ordered respondent to complete various tasks, including (1) maintaining contact and cooperating fully and completely with DCFS, (2) obtaining a drug and alcohol assessment and successfully

completing any recommended treatment, (3) performing random drug drops two times per month, (4) participating in and successfully completing counseling, (5) successfully completing a parenting course, (6) obtaining and maintaining stable housing, (7) visiting T.D. as scheduled, and (8) using his best efforts to obtain and maintain a legal source of income. The court also admonished respondent to cooperate with DCFS, comply with the terms of the service plans, and correct the conditions that required T.D. to be in the care of DCFS or risk termination of his parental rights.

¶ 8 In December 2021, T.D.'s caseworker discovered that respondent was arrested on December 9, 2021, for domestic battery against T.D.'s mother. As a result of that incident, DCFS recommended that respondent engage in and complete a domestic violence course. On March 1, 2022, the trial court ordered respondent to complete a domestic violence class.

¶ 9 B. Permanency Review Hearings

¶ 10 On May 24, 2022, the trial court held a permanency review hearing and found that respondent had made reasonable efforts to achieve the service plan and permanency goal of T.D. "return[ing] home within 1 year." As of that date, the court determined that respondent was fit, "given his lack of contribution to the neglect." In late August 2022, respondent was arrested by police on a federal warrant. Respondent was immediately incarcerated in the Peoria County jail.

¶ 11 The trial court held four permanency review hearings between October 2022 and February 2024. At each hearing, the court deferred a finding as to respondent's efforts due to his incarceration. At the first three hearings, the court found respondent remained fit but unable due to incarceration. On August 15, 2023, at the request of the State, the court entered an order changing the permanency goal from "return home within 1 year" to "substitute care pending court decision," over respondent's objection, because of a "lack of parental progress & contact with the

minor." The order further stated: "State intends to file a TPR," a petition to terminate parental rights. At the fourth permanency review hearing on February 29, 2024, the court entered a permanency review order finding respondent "unfit based on his criminality," over respondent's attorney's objection. The court also stated: "The court encourages the state to file a TPR in a timely manner."

¶ 12 C. Termination Proceedings

¶ 13 On August 14, 2024, the State filed a petition for termination of parental rights. The State alleged that respondent was unfit under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2024)) in that he failed to make reasonable progress toward the return of T.D. to him during the nine-month period of November 14, 2023, to August 14, 2024.

¶ 14 On March 11, 2025, the trial court held a hearing on the petition. Respondent was still incarcerated but was present at the hearing by phone. The parties agreed to the admission of respondent's two service plans for the relevant nine-month period and respondent's mental health and parenting education records from the Federal Bureau of Prisons.

¶ 15 1. *Unfitness Hearing*

¶ 16 Rabian Hancock, T.D.'s caseworker since April 27, 2023, testified as follows. According to the service plans, respondent was ordered to complete drug drops, a substance abuse assessment, a parenting class, and a domestic violence class. A previous caseworker reported that respondent completed a drug and alcohol assessment in 2021, but respondent completed no services while Hancock was T.D.'s caseworker. Respondent had been continuously incarcerated since Hancock became T.D.'s caseworker. Respondent was initially incarcerated in the Peoria County jail before being transferred to federal prisons in Forest City, Arkansas; Marion, Illinois; and Oxford, Wisconsin. Hancock testified that respondent's incarceration was a barrier to

returning T.D. to respondent's care. Hancock did not speak to respondent and was unable to refer respondent for services during the relevant nine-month period from November 14, 2023, to August 14, 2024. However, respondent called Hancock on September 15, 2023, to tell her "he wanted to sign his rights [to T.D.] over to his brother in Mississippi." When Hancock told respondent he would have to talk to his attorney about that, respondent became upset. Respondent never attempted to contact Hancock again.

¶ 17 Hancock sent respondent letters in prison on or around November 29, 2023, and July 2, 2024, enclosing the trial court's most recent permanency review orders and including her contact information. The letter Hancock sent in July was returned undelivered because respondent was no longer at the Forest City facility. Hancock did not know until then that respondent had been transferred to a different facility. Respondent had no visits and no contact whatsoever with T.D., including phone calls, letters, gifts, or cards during the relevant nine-month period.

¶ 18 Hancock authored two service plans during the nine-month period: one in December 2023 and one in July 2024. Hancock rated respondent's progress toward the permanency goal as "unsatisfactory" in both plans. At no point during the nine-month period did Hancock feel it was safe or appropriate to return T.D. to respondent. Hancock testified that at the end of the nine-month period, respondent was no closer to having T.D. returned to him than he was at the beginning of the period. Respondent never talked to Hancock about visits with T.D. Hancock admitted that she did not know what services were available to respondent during the nine-month period due to his incarceration.

¶ 19 Respondent testified that he is currently incarcerated in a federal prison in Oxford, Wisconsin. During the relevant nine-month period, he was incarcerated in Marion, Illinois. He is incarcerated for being a felon in possession of a firearm. Respondent testified that he did not

perform any drug drops or complete a parenting class while he was at Marion. According to respondent, Marion did not offer a parenting class or counseling, but respondent said he talked to his "psychologist." Respondent said he attended an outpatient drug clinic and talked to the psychologist "after class." Respondent testified that he completed two drug classes: a 40-hour class and a 15-week class. He did not complete the 15-week program before August 14, 2024. Respondent testified that he took advantage of what was available at Marion by attending drug classes. Respondent did not want T.D. to visit him while he was incarcerated out of a concern for T.D.'s "well-being."

¶ 20 The trial court found that it was "very clear to the Court that [respondent] failed to make reasonable progress toward the return of the child to his care during the relevant nine-month period of time" because respondent was incarcerated during the entire time, lacked "safe, stable housing for a small child, and didn't have the adequate income." The court, therefore, found respondent unfit and proceeded to the best-interest hearing.

¶ 21 2. *Best-Interest Hearing*

¶ 22 Hancock testified that T.D. had been in his current foster placement since September 2021. Hancock visited T.D. monthly at his foster home, where T.D. lived with his foster mother. T.D. called his foster mother "mom," had a loving and caring relationship with her, was very attached to her, and had a "very strong bond" with her. T.D.'s foster mother had strong family support from her mother, stepfather, and many other family members, who accepted T.D. T.D.'s foster mother would like to adopt T.D. Hancock believed it was in T.D.'s best interest to be adopted by his current foster parent. Hancock had never heard T.D. talk about respondent. According to Hancock, T.D. wants to remain with his foster parent.

¶ 23 Respondent testified that he last saw T.D. on his first birthday in July 2022.

Respondent will be moving to a halfway house in Peoria on August 19, 2025. T.D. cannot live with respondent at the halfway house, but respondent thought T.D. could "come visit" him there. Respondent did not know how long he would be at the halfway house. Respondent would like T.D. to be returned to him after he completed his time at the halfway house. Until then, respondent thought T.D. should be placed with his "sister's friend." Respondent wanted to have the opportunity to be a parent to T.D. and T.D. to have a relationship with his other two children.

¶ 24 At the conclusion of the testimony and arguments, the trial court stated: "I think it's noteworthy that most of [respondent]'s testimony here today was about how [respondent] feels or what [respondent] wants. And his testimony didn't really address any of the best interest factors in any meaningful fashion." Thereafter, the court stated that T.D. had been in care with his current foster parent for 43 months and had developed a sense of attachment, security, and familiarity with his foster mother, making T.D.'s current placement the "least disruptive." The court also discussed T.D.'s "[n]eed for permanence," as well as T.D.'s ties to school, church, family, and religion that were "all being fostered by the foster parent." While the court found that respondent being released from prison soon was "good news for [respondent], that's still a far cry from *** being in a position where we could return *** [T.D.] to his care anytime soon thereafter." The court found it would be "unfair" to T.D. to make him "wait for [respondent]" to prove that he is "fit and able" when T.D. has "already waited" for "almost four" years. The court concluded that the vast majority of the statutory factors weighed in favor of termination and that the State proved it was in T.D.'s best interest to terminate respondent's parental rights.

¶ 25 3. *Order*

¶ 26 On March 19, 2025, the trial court entered a written order, finding that the State proved by clear and convincing evidence that respondent was unfit as alleged in the petition and

that it was in the best interest of T.D. to terminate respondent's parental rights. The court appointed the guardianship administrator of DCFS as guardian of T.D., with the power to consent to T.D.'s adoption.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent's counsel stated that he considered three possible contentions of error: (1) the trial court erred in presiding over the adjudication and best-interest hearings, (2) the court erred in finding respondent unfit, and (3) the court erred in finding it was in the best interest of T.D. to terminate respondent's parental rights.

¶ 30 A. Trial Court's Impartiality

¶ 31 A trial judge must recuse himself "when his participation might reasonably give rise to questions regarding his impartiality, including situations involving the appearance of impropriety." *People v. Buck*, 361 Ill. App. 3d 923, 931 (2005). When a judge takes "the extraordinary *** step of *directing* the State's Attorney to file a petition to terminate parental rights," "that judge must thereafter recuse himself or herself from any proceedings on that petition once it is filed." (Emphasis in original.) *In re A.T.*, 197 Ill. App. 3d 821, 835 (1990) (Steigmann, J., specially concurring). Recusal is necessary in that situation because "the trial judge is essentially acting as an advocate for the minor" and abdicating "his or her neutral role" as a judge. *In re Z.J.*, 2020 IL App (2d) 190824, ¶ 84.

¶ 32 However, where the trial court does not *sua sponte* direct a party to file a termination petition but enters an order requested by a party that is supported by the evidence presented at a hearing, the court need not recuse itself. See *In re D.D.*, 2022 IL App (4th) 220257, ¶ 35 (finding that the court properly changed the permanency goal following a request from the

State); *Z.J.*, 2020 IL App (2d) 190824, ¶ 84 (same). Additionally, where a court recommends, but does not direct, the State to file a termination petition, recusal is unnecessary. See *In re Chass. M.*, 2024 IL App (4th) 240896-U, ¶ 59.

¶ 33 Here, at the permanency review hearing on August 15, 2023, the State requested that the permanency goal be changed from "return home within 1 year" to "substitute care pending court decision." The trial court granted that request and changed the permanency goal because T.D.'s mother had been found unfit 20 months earlier and never regained her fitness and respondent had been found "unable" for approximately 10 months due to his incarceration. At that hearing, the State notified the court that it "intend[ed] to file a TPR." At the next permanency review hearing, on February 29, 2024, the permanency goal remained the same, and the State requested that respondent be found unfit. The court entered an order finding respondent unfit "based on his criminality" and "encourage[d] the state to file a TPR in a timely manner." Approximately six months later, the State filed such a petition.

¶ 34 In this case, the State, not the judge, initially mentioned filing a termination petition at the August 15, 2023, permanency review hearing. That the trial judge "encourage[d]" the State to do so six months later did not require him to recuse himself. See *Chass. M.*, 2024 IL App (4th) 240896-U, ¶ 59. Unlike the situation contemplated by Justice Steigmann in *A.T.*, here, the judge did not direct the State to file a termination petition but merely recommended that the State do so after the State previously indicated that it "intend[ed] to file a TPR." Thus, the judge did not become an advocate for T.D. but retained his "neutral role." See *Z.J.*, 2020 IL App (2d) 190824, ¶ 84. Under these circumstances, appellate counsel is correct that he could "not offer any non-frivolous argument that the trial court erred in presiding over these proceedings."

¶ 35 B. Unfitness

¶ 36 The involuntary termination of parental rights involves a two-step process. See 705 ILCS 405/2-29(2) (West 2024). The State must first prove by clear and convincing evidence that the respondent is unfit. See *In re C.M.*, 305 Ill. App. 3d 154, 163 (1999). A parent can be found unfit for failing "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." 750 ILCS 50/1(m)(ii) (West 2024).

¶ 37 Reasonable progress, which is assessed under an objective standard, exists when a parent's compliance with the service plan and the trial court's directives "is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). A parent fails to make reasonable progress toward the return of the child when the parent fails " 'to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care.' " *In re C.N.*, 196 Ill. 2d 181, 217 (2001) (quoting 750 ILCS 50/1(D)(m) (West Supp. 1999)). A finding of unfitness is appropriate if "the court will not be able to return the child home in the near future, despite ample time and opportunity for compliance with the court's directives." *In re Ta. T.*, 2021 IL App (4th) 200658, ¶ 55.

¶ 38 We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Dar. H.*, 2023 IL App (4th) 230509, ¶ 54. A court's finding is against the manifest weight of the evidence only "when the opposite conclusion is clearly apparent." *Dar. H.*, 2023 IL App (4th) 230509, ¶ 54. Under this standard, "we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002). We "must not

substitute [our] judgment for that of the trial court regarding the credibility of witnesses, the weight to be given the evidence, or the inferences to be drawn." *D.F.*, 201 Ill. 2d at 499.

¶ 39 Here, the State alleged that respondent was unfit for failing to make reasonable progress toward the return of T.D. during the nine-month period of November 14, 2023, to August 14, 2024. According to the trial court's orders and the service plans, prior to and during this period, respondent was to (1) maintain contact with and cooperate with DCFS, (2) obtain a drug and alcohol assessment and successfully complete any recommended treatment, (3) perform random drug drops two times per month, (4) participate in and successfully complete counseling, (5) successfully complete a domestic violence course, (6) obtain and maintain stable housing, (7) visit T.D., and (8) use his best efforts to obtain and maintain a legal source of income.

¶ 40 As appellate counsel noted, the evidence at the unfitness hearing established that during the nine-month period, respondent completed a drug education program and some psychological services. However, during that period, respondent was continuously incarcerated and failed to (1) communicate with DCFS, (2) perform random drug drops, (3) successfully complete a domestic violence course, (4) obtain and maintain stable housing, (5) visit T.D., and (6) obtain and maintain a legal source of income. At the time of the hearing, respondent remained incarcerated and testified that he would be moving to a halfway house in August 2025. However, respondent did not know how long he would be required to stay in the halfway house and acknowledged that T.D. could not live with him there.

¶ 41 As the trial court stated, the evidence established that T.D. could not be returned to respondent's care anytime soon. Thus, the court's finding of unfitness was not against the manifest evidence. See *Ta. T.*, 2021 IL App (4th) 200658, ¶ 55. We agree that appellate counsel could not "offer any non-frivolous argument that the court's finding [of unfitness] was against the manifest

weight of the evidence."

¶ 42 C. Best Interest

¶ 43 If a parent is found to be unfit, the State must then prove that terminating parental rights is in the minor's best interest. *In re J.B.*, 2019 IL App (4th) 190537, ¶ 31. At this step, the focus shifts from the parent to the child. *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.) *D.T.*, 212 Ill. 2d at 364. Consequently, at a best-interest hearing, "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.

¶ 44 The burden is on the State to prove by a preponderance of the evidence that termination of a parent's rights is in the best interest of the child. *D.T.*, 212 Ill. 2d at 366. When determining a minor's best interest, the trial court must consider the following factors "in the context of the child's age and developmental needs:"

> "(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, including the child's wishes regarding available permanency options and the child's wishes regarding maintaining connections with parents, siblings, and other relatives;

(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, 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, including willingness to provide permanency to the child, either through subsidized guardianship or through adoption." 705 ILCS 405/1-3(4.05) (West 2024).

¶ 45 The trial court's best-interest determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *J.B.*, 2019 IL App (4th) 190537, ¶ 33. We afford great deference to the court's determination, as it is in the best position to view the witnesses and judge their credibility. *J.B.*, 2019 IL App (4th) 190537, ¶ 33.

¶ 46 As appellate counsel noted, respondent testified that he had not seen his son since his first birthday, which was 31 months before the best-interest hearing, and "offered no evidence to demonstrate any type of bond or familiarity with his son." Additionally, respondent did not correct the conditions that brought T.D. into care. On the other hand, T.D.'s caseworker testified

that T.D. (1) had a strong bond with his foster mother, with whom he had lived for 43 months, nearly his entire life, (2) wanted to continue living with his foster mother, (3) enjoyed ties to his foster parent's community, and (4) was well cared for, comfortable, and safe with his foster parent. Additionally, T.D.'s foster parent wanted to adopt T.D., providing T.D. stability and permanence.

¶ 47 The trial court found that almost all the relevant factors weighed in favor of terminating respondent's parental rights, specifically noting that T.D. remaining with his current foster parent would be the "least disruptive" placement for T.D. and provide T.D. with the much-needed permanence he deserved. While the focus at the best-interest hearing shifts from the parent to the child (*D.T.*, 212 Ill. 2d at 364), as the court found, respondent's testimony focused on what was best for him, rather than what was best for T.D. In light of the best-interest factors and the evidence showing that respondent failed to make progress toward regaining custody of T.D., the court reasonably concluded that terminating respondent's parental rights was in T.D.'s best interest. We agree that appellate counsel could not "offer any non-frivolous argument that the court's [best-interest] finding was against the manifest weight of the evidence."

¶ 48 After examining the record, we agree that the issues counsel identified lack arguable merit, and we have identified no other arguably meritorious issues. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 49 III. CONCLUSION

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

¶ 51 Affirmed.