2024 IL App (4th) 240051-U

NOS. 4-24-0051, 4-24-0052, 4-24-0053, 4-24-0054, 4-24-0055 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 13, 2024
Carla Bender
4th District Appellate
Court, IL

In re S.H., A.J., Sha'M.H., L.C., and Sha'R.H., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Peoria County
Petitioner-Appellee,	)	Nos. 19JA458
v.	)	19JA459
LADEESEA C.,	)	19JA460
Respondent-Appellant).	)	19JA461
	)	19JA462
	)	
	)	Honorable
	)	Derek G. Asbury,
	)	Judge Presiding

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Zenoff concurred in the judgment.

ORDER

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

¶ 2 In December 2023, the trial court entered an order terminating the parental rights of respondent, Ladeesea C., as to her minor children, S.H. (born in 2017), A.J. (born in 2015), Sha'M.H. (born in 2014), L.C. (born in 2013), and Sha'R.H. (born in 2011). Respondent appealed, and her appointed counsel has moved to withdraw pursuant to *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 procedure that appellate counsel should follow when seeking to withdraw). The children's fathers are not parties to this appeal.

¶ 3 Appellate counsel's notice of filing and proof of service indicate she sent a copy of the motion to withdraw to respondent by mail. More than 30 days have passed, and respondent has not filed a response.

¶ 4 In her brief, counsel contends this case presents no potentially meritorious issues for review on appeal. After reviewing the record and counsel's motion, we grant the motion to withdraw and affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 A. The Neglect Petition

¶ 7 On December 13, 2019, the State filed identical petitions for adjudication of wardship, alleging each child was neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2018)) in that their environment was injurious to their welfare. The State alleged that, on December 11, 2019, Peoria police officers, after responding to a 911 call at an apartment, found the children left alone without supervision. The apartment was devoid of food safe for consumption and filled with piles of garbage up to three feet high, dirty clothing, rotten food, and open containers of bleach. Feces were scattered throughout, there were insect infestations, and the apartment smelled strongly of urine and feces. Respondent did not return until over 30 minutes after police officers called her.

¶ 8 The State also alleged the Illinois Department of Children and Family Services (DCFS) reported similar conditions and added that the front door, which was the only means of egress, was blocked by piles of garbage. DCFS also observed soiled diapers all around and paper plates with old food on them. The carpet was wet with what appeared to be urine, the water in the bathroom sink did not work, and none of the children were of an age or height that would have allowed them to obtain a drink that was fit for consumption. The children appeared dirty

and were tired and hungry. DCFS further observed a water heater had clothing stacked against the ignition and heating element, posing a risk of fire, and an access panel in the hallway to the furnace was broken and could have caused entrapment of the children. When officers interviewed respondent, she said she was " 'clueless' " and did not know why the children were left alone. She reported a friend was supposed to watch the children. Respondent was uncooperative in providing information for people she claimed were babysitters.

¶ 9 On February 20, 2020, the trial court held a dispositional hearing. Respondent admitted the minors were neglected under two counts of the petition. The court found respondent unfit, and the minors were made wards of the court, with both guardianship and custody awarded to DCFS. However, the court failed to check some of the boxes on an order form reflecting its findings.

¶ 10 The trial court ordered respondent to complete the following tasks in order to correct the conditions that led to the adjudication and removal of the children: (1) execute all authorizations for releases of information requested by DCFS; (2) cooperate fully and completely with DCFS; (3) obtain a drug and alcohol assessment arranged by DCFS, complete any course of treatment recommended, and provide proof to DCFS of successful completion; (4) perform random drug drops four times per month; (5) successfully complete counseling and provide DCFS with proof of completion; (6) successfully complete a parenting class specified by DCFS and provide DCFS with proof of completion; (7) obtain and maintain stable housing conducive to the safe and healthy rearing of the children; (8) provide the caseworker with any change in address and/or phone number and any change in the members of respondent's household within three days; (9) provide to the caseworker the name, date of birth, social security number, and relationship of any individual requested by DCFS with whom DCFS had reason to believe a

relationship existed which would affect the children; (10) visit as scheduled with the children and demonstrate appropriate parenting conduct during visits; and (11) use her best efforts to obtain and maintain a legal source of income.

¶ 11 B. Termination Proceedings

¶ 12 On March 17, 2022, the State filed a petition for termination of parental rights, alleging respondent was unfit under sections 1(D)(m)(i) and (ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i), (ii) (West 2022)) for (1) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children during a nine-month period after the adjudication of neglect and (2) failure to make reasonable progress toward the return of the children to her care during a nine-month period after the adjudication of neglect. The State alleged a nine-month period of August 15, 2020, to May 15, 2021.

¶ 13 1. *Jurisdiction Objection*

¶ 14 In September, October, and November 2023, the trial court held a hearing on the petition. Initially, counsel for one of the fathers argued the court lacked jurisdiction because the adjudicatory order did not check all of the necessary boxes reflecting the court's findings. Counsel for respondent joined in that argument. The court stated it had become aware that the adjudicatory and dispositional orders, which were entered by a different judge, lacked some boxes being checked. The court did not know if it was a scrivener's error or if the court at that time did not find those matters established. For expediency due to the numerous times the case had been continued, the court reserved ruling on the issue but proceeded with the hearing. The court stated it would obtain the transcripts and dismiss for lack of jurisdiction if warranted.

¶ 15 Before making its findings as to fitness, the trial court revisited the issue of jurisdiction. The court, having read the transcripts from the February 20, 2020, adjudicatory

hearing, noted that the previous judge specifically made fitness findings as to each parent and stated the children were made wards of the court, with DCFS named guardian. Accordingly, the court found the failure to check boxes on the order form was a scrivener's error and continued with the proceedings.

¶ 16 2. *Unfitness*

¶ 17 Pepper Falatko, a foster care placement worker for the Center for Youth and Family Solutions, the agency designated by DCFS to provide casework services, testified she had been the minors' caseworker from the time the case was opened until the end of May 2021. Under the service plan, respondent was to complete a parenting class, complete drug screens, obtain employment, and attend counseling.

¶ 18 Falatko testified respondent did not have stable housing. Respondent lived with her mother for a period of time and then with friends, and she never had a home where Falatko could perform a visit. Respondent had stated she was briefly employed part-time at McDonald's but never provided proof of income. Falatko sent a monthly e-mail with job openings to parents on her case list but did not know if respondent applied for any of the positions. Respondent also did not keep consistent contact with Falatko. When asked specifically about the nine-month period at issue, Falatko testified respondent was not cooperative with the service plan. Respondent never regularly engaged in services. She attended some counseling, but not for the entire nine-month period, and she was never successfully discharged from counseling. She was enrolled in parenting classes multiple times during the nine-month period but did not complete them.

¶ 19 Falatko testified she had concerns respondent used alcohol and marijuana that might negatively affect her parenting because, when the children came into DCFS care,

respondent had left them alone to go drinking at a bar. Respondent did not attend drug drops during the nine-month period. Falatko further testified about times respondent was uncooperative when Falatko attempted to contact her or discuss services with her. Falatko stated she did not feel it was safe to return the children to respondent at the end of the nine-month period. A psychological assessment had been scheduled, but Falatko did not know if it had been completed.

¶ 20 On cross-examination, Falatko testified respondent had completed a drug and alcohol assessment but could not recall if services were recommended. Because of COVID-19 protocols, parenting classes were held over Zoom, and the link was sent by e-mail. Falatko stated respondent had communicated with her via phone, so she assumed respondent's phone was working. Falatko testified respondent attended her visits with the children and would bring snacks and gifts to them. Respondent arrived at one visit wearing a McDonald's shirt.

¶ 21 Respondent testified she attended a drug and alcohol assessment and was not recommended for services. She stated she also completed a psychological evaluation. Respondent testified she did not complete a parenting class due to miscommunications between herself and Falatko. Respondent said Falatko did not reach out to her by phone or e-mail about the classes and also said her "phone was messed up" during part of the relevant time period. Respondent testified Falatko knew her phone was not working. She later clarified her phone did not work only when she was unable to pay her bill on time. However, she also stated there was a time the screen on her phone shattered, but she got it fixed. She would sometimes go to the library to check e-mail but did not always have transportation to get there. She admitted she used family members' phones when hers was broken, and she previously provided Falatko with family members' phone numbers. Respondent testified she knew of only one parenting class, and

she received notice on the same day as the class. She took a bus there but could not arrive on time, and she was removed from the class based on her lack of attendance.

¶ 22 Respondent testified she lived with her mother when the case started but had to leave when one of the children was placed there. She said if her fitness was restored, she could move back in with her mother. Respondent was looking for housing during the time period at issue and moved from house to house, staying with family members. She testified she sent a McDonald's paystub to her caseworker, but she said it was someone other than Falatko.

¶ 23 Respondent testified she had been engaged in counseling since January 2020. The only time she missed appointments was due to conflicts with her work. On cross-examination, she stated there was a time where there was a gap in services because she was being assigned a new counselor.

¶ 24 The trial court found respondent failed to make reasonable progress toward the return of the children within the relevant nine-month period. The court noted respondent did not consistently make progress on her required tasks and, in particular, had not performed the required drug drops or obtained stable housing. Thus, the court found the children were "nowhere near returning home." As a result, the court found respondent unfit.

¶ 25 3. *The Children's Best Interest*

¶ 26 At the best-interest portion of the hearing, Heide Carlson testified she was the current caseworker for the family. Carlson testified she learned respondent had begun living with a paramour, but Carlson was unable to obtain any contact information about the person. She testified she was given an address but had not been able to see the home and was unable to obtain the information necessary to perform a background check. Carlson also indicated she was concerned because respondent reported her paramour had children, and respondent was not

supposed to be living with any minors. She testified respondent's drug drops were still inconsistent and, when she did them, she usually tested positive for marijuana. Respondent had successfully completed her psychological evaluation and counseling and attended all of her visits.

¶ 27 Carlson testified visits between the children and respondent had always been supervised, and there had never been any overnight visits. Carlson testified there had been issues in the past with getting the children to attend visits with respondent. She said they reported they loved respondent but did not want to go back to where there was no water or food and they were left alone. Carlson stated the children had insecurities and "kind of flashbacks from that trauma."

¶ 28 Carlson testified the three youngest children had been together in a licensed foster home since September 2022. The children had their own beds, their medical and educational needs were being met, they were doing well in school, and they were bonded to their caregiver. The children had received placement stabilization services and were attending counseling. The caregiver had family and community support. The caregiver was willing to provide permanency by means of adoption for all three children and would allow contact with their biological parents and siblings depending on the children's wishes. The children wanted to be adopted.

¶ 29 As to the oldest two children, Carlson testified Sha'R.H. had moved to her current caregiver's home in March 2023, but L.C. had resided there since September 2022. The caregiver was an unlicensed relative and provided proper food, clothing, and shelter. Both children were doing well in school, and their medical and mental-health needs were being met. L.C. attended equine therapy, and Sha'R.H. saw a counselor. Sha'R.H. had been moved around a lot before the current placement and was considered "behavior specialized." Sha'R.H. liked to

challenge authority and "push buttons," but the caregiver was willing to work with her and handled her behaviors well.

¶ 30 Carlson testified Sha'R.H. had a lot of anger that she projected onto respondent and would use any excuse not to visit respondent. However, she was more willing to attend visits at her current placement. Both children were willing to stay at their current placement. The caregiver had community support and was willing to provide permanency either through adoption or guardianship and was willing to keep the children in contact with respondent and the other children. Carlson recommended the trial court terminate respondent's parental rights and change the children's goals to adoption.

¶ 31 Respondent testified she had been living with her paramour and his three children for a month and had provided Carlson her new address. She testified her name was not on the lease but said it would be a stable place for her and the children to come home to.

¶ 32 Respondent testified she had completed all of her drug drops except the last one due to an issue with not having her identification when she arrived to perform the testing. She said she did not have the children in her care when she tested positive for marijuana, her caseworker never talked to her about a substance abuse assessment, and she had not been arrested for issues related to marijuana use.

¶ 33 Respondent testified the children told her they did not attend visits because of the petition against her or because they had conflicting activities. She said the children wanted everyone to be together as a family again. Respondent stated she used skills taught in the parenting classes and had a strong bond with the children. She also indicated she spoke with the children often on the phone. Respondent's preference was to have the children in her care as a

parent as opposed to adoption or guardianship. However, respondent admitted the children were taken care of in their foster homes.

¶ 34 Respondent provided a photo of her together with the children during a visit and a letter written to the trial court by L.C. In that letter, L.C. stated she cannot live without her siblings and "also can I come back with my mom." She further wrote she really wanted her family back and "it[']s going to make us all happy."

¶ 35 The children's guardian *ad litem* (GAL) recommended termination of respondent's parental rights. The trial court noted the requirements of the Juvenile Court Act and stated it would terminate parental rights to the youngest three children and change the permanency goal to adoption. However, as to the two older children, the court continued the matter for the GAL to meet with the children and ascertain their wishes.

¶ 36 On December 20, 2023, the GAL reported he had met with L.C. and Sha'R.H. The GAL testified L.C. felt safe and stable in the foster home. However, L.C. preferred guardianship and reunification with respondent and the entire family. The GAL clarified L.C.'s specific reason for not wanting respondent's parental rights terminated was for reunification of the entire family, stating it was largely linked to a desire for "that family unit" the family had in the past with a grandfather who was now deceased. Sha'R.H. preferred adoption. The GAL recommended the trial court terminate parental rights and change the permanency goal to adoption for all of the children.

¶ 37 The trial court noted it was not in a position where it could grant L.C.'s wish for the entire family to be reunited. The court found it was in the best interest of the children to terminate parental rights. Accordingly, the court entered an order terminating parental rights and

changing the permanency goal of all of the children to adoption. Respondent appealed, and this court appointed counsel to represent her.

¶ 38 II. ANALYSIS

¶ 39 Appellate counsel now moves to withdraw. In *S.M.*, 314 Ill. App. 3d at 685-86, this court held that counsel seeking to withdraw from representation of a respondent appealing the termination of his or her parental rights must follow the procedure set out in *Anders*. Under *S.M.* and *Anders*, counsel's request to withdraw must " 'be accompanied by a brief referring to anything in the record that might arguably support the appeal.' " *S.M.*, 314 Ill. App. 3d at 685 (quoting *Anders*, 386 U.S. at 744). Counsel must (1) briefly set out the arguments supporting any issues that she could conceivably raise on appeal, (2) explain why she concludes that those arguments are frivolous, and (3) conclude the case presents no viable grounds for appeal. *S.M.*, 314 Ill. App. 3d at 685. Counsel should review both the unfitness finding and the best interest determination and indicate in the brief that she has done so. *S.M.*, 314 Ill. App. 3d at 685-86.

¶ 40 Appellate counsel avers she has reviewed the record on appeal and submits it would be frivolous to argue the trial court erred by (1) determining it had jurisdiction, (2) finding respondent unfit, and (3) finding it in the children's best interest to terminate respondent's parental rights. For the reasons that follow, we agree this appeal presents no issues of arguable merit, grant counsel's motion to withdraw, and affirm the court's judgment.

¶ 41 A. Jurisdiction

¶ 42 Counsel first submits it would be frivolous to argue the trial court lacked jurisdiction based on the scrivener's error in checking boxes on the February 20, 2020, adjudicatory order.

¶ 43 Counsel correctly notes a trial court has inherent authority to enter a *nunc pro tunc* order to correct clerical errors or matters of form in a prior order or written record of judgment to ensure the record conforms to the judgment actually rendered by the court. *Roach v. Coastal Gas Station*, 363 Ill. App. 3d 674, 678 (2006) (citing *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991), abrogated by, *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 30-33 (2002)). "*Nunc pro tunc* orders may be entered to correct clerical errors, but such an order cannot be used to correct judicial errors." *Krilich v. Plencer*, 305 Ill. App. 3d 709, 712-13 (1999). An inadvertent scrivener's error may be corrected with such an order. See *Krilich*, 305 Ill. App. 3d at 713 (listing examples).

¶ 44 Here, the trial court read the transcripts of the previous proceeding and verified the court made the necessary findings and ordered wardship and guardianship of the children to be placed with DCFS. Accordingly, we agree with counsel that the deficiencies in the adjudicatory order of February 20, 2020, were scrivener's errors in failing to check boxes on the form. Thus, the court could correct the clerical error and was not deprived of jurisdiction.

¶ 45 B. Unfitness

¶ 46 Counsel next submits no meritorious argument can be made the trial court erred in finding respondent unfit.

¶ 47 1. *The Bifurcated Termination Standard*

¶ 48 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2022)), the involuntary termination of parental rights is a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as defined in the Adoption Act. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). If the State proves unfitness, it then must prove

by a preponderance of the evidence that termination of parental rights is in the best interest of the child. *In re D.T.*, 212 Ill. 2d 347, 363-66 (2004).

¶ 49 2. *The Unfitness Finding*

¶ 50 Parental rights may not be terminated without the parent's consent unless the trial court first determines, by clear and convincing evidence, the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *Gwynne P.*, 215 Ill. 2d at 349.

¶ 51 Under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2022)), a parent may be found unfit if he or she fails to "make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected *** minor." A "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" constitutes a failure to make reasonable progress for purposes of section 1(D)(m)(ii). 750 ILCS 50/1(D)(m)(ii) (West 2022).

¶ 52 A trial court should measure the reasonableness of a parent's progress against what must occur before a child can safely return to the parent. *In re C.N.*, 196 Ill. 2d 181, 213-14 (2001). "[T]he overall focus in evaluating a parent's progress toward the return of the child [must] remain[ ], at all times, on the fitness of the parent in relation to the needs of the child." *C.N.*, 196 Ill. 2d at 216. Illinois courts have defined "reasonable progress" as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007). This court has explained reasonable progress exists when a trial court "can conclude 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 trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re N.G.*, 2018 IL 121939, ¶ 29.

¶ 53 Here, counsel is correct it would be frivolous to argue the trial court's finding respondent failed to make reasonable progress towards the children's return was against the manifest weight of the evidence. The State proved by clear and convincing evidence respondent failed to make reasonable progress toward the return of the children during the nine-month period at issue. The record is clear respondent failed to consistently engage in services. Respondent failed to complete drug drops, did not complete counseling, failed to complete a parenting class, and did not provide proof of employment. Most important, she failed to obtain stable housing. Thus, it was clear the court could not conclude it would be able to order the children returned to parental custody in the near future. As such, respondent did not "substantially fulfill her *** obligations under the service plan" and therefore did not make reasonable progress toward the return of the children to her care. 750 ILCS 50/1(D)(m)(ii) (West 2022). Accordingly, we agree counsel would be unable to present a meritorious argument the court's finding was against the manifest weight of the evidence.

¶ 54 C. Best Interest Determination

¶ 55 Counsel next submits the trial court did not err in finding it was in the children's best interest to terminate respondent's parental rights.

¶ 56 Once a parent has been found unfit under one or more grounds in the Adoption Act, the State must establish by a preponderance of the evidence it is in the minor's best interest to terminate parental rights. 705 ILCS 405/2-29(2) (West 2022); *In re Tyianna J.*, 2017 IL App (1st) 162306, ¶ 97. " 'Proof by a preponderance of the evidence means that the fact at issue ***

is rendered more likely than not.' " *In re D.D.*, 2022 IL App (4th) 220257, ¶ 50 (quoting *People v. Houar*, 365 Ill. App. 3d 682, 686 (2006)). Once a parent is found unfit, the focus shifts 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. Thus, following an unfitness finding, the trial court focuses on the needs of the child in determining whether parental rights should be terminated. *In re J.V.*, 2018 IL App (1st) 171766, ¶ 249. " 'A child's best interest is superior to all other factors, including the interests of the biological parents.' " *J.V.*, 2018 IL App (1st) 171766, ¶ 249 (quoting *In re Curtis W.*, 2015 IL App (1st) 143860, ¶ 52).

¶ 57 The Juvenile Court Act lists several factors the trial court should consider when making a best interest determination. Those factors, considered in the context of the child's age and developmental needs, include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

Also relevant when making a best-interest determination is the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would

have on the child's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). This court will not reverse a trial court's finding it was in a minor's best interest to terminate parental rights unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883 (2010).

¶ 58 Here, the record shows the trial court's determination was not against the manifest weight of the evidence. The court noted the requirements of the Juvenile Court Act, and its findings were supported by the evidence. The uncontroverted evidence showed the children's caregivers met their physical, mental-health, medical, and educational needs. The youngest three children and Sha'R.H. expressed a desire to be adopted. Although L.C. did not want respondent's rights terminated, the record shows L.C. was motivated by a desire for the entire family to be together, which was not possible. Meanwhile, respondent did not show an ability to provide a permanent and stable home in the near future. While she was living with a paramour, she had been there for only one month and had not provided the information necessary to evaluate the home. Under these circumstances, where the children are well cared for in their placements and respondent's inability to provide permanency in the foreseeable future was well established, the facts do not clearly demonstrate the court should have reached the opposite result in making its best-interest determination. Accordingly, we agree with counsel that it would be frivolous to argue the court's best interest determination was against the manifest weight of the evidence.

¶ 59 III. CONCLUSION

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

¶ 61 Affirmed.