STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1162

In the Matter of the Welfare of the Children of:
F. M. P. (f/k/a R., nee J.), Parent.

Filed January 29, 2008
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-JV-05-9224

Leonardo Castro, Hennepin County Public Defender, Peter W. Gorman, Assistant Public Defender, 317 Second Avenue South, Suite 200, Minneapolis, MN 55401 (for appellant F.M.P.)

Michael O. Freeman, Hennepin County Attorney, Michelle A. Hatcher, Assistant County Attorney, Health Services Building, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415 (for respondent Hennepin County Human Services and Public Health Department)

F. Lee Hagens, Assistant Public Defender, 317 Second Avenue South, Minneapolis, MN 55401 (for respondent J.E.R.)

Shawn Renee Kennon, Assistant Public Defender, 317 Second Avenue South, Suite 200, Minneapolis, MN 55401 (for respondent W.P., Jr.)

Shirley A. Reider, 842 Raymond Avenue #205, St. Paul, MN 55114 (for guardian ad litem Barbara Mulrooney)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant F.M.P. challenges the termination of her parental rights to J.E.R., N.D.R., and S.E.R., arguing that (1) the record lacks clear and convincing evidence that a statutory basis exists for the termination and the proceedings were fundamentally unfair; and (2) there is not clear and convincing evidence that termination is in the children's best interests. We affirm.

FACTS

This appeal arises from the district court's order terminating appellant's parental rights to minor children J.E.R., N.D.R., and S.E.R. Appellant's history with child-protective services began in 1996, when she was charged with malicious punishment of another one of her children. Following that incident, her children were placed in foster care for six months. In 1997, appellant left her then infant daughter, N.D.R., in an apartment filled with smoke. In January 2005, respondent, the Hennepin County Health and Human Services Department, received a report that the children had been exposed to drug dealing and drug use in appellant's home. The following month, while receiving help in obtaining a protective order against her husband, appellant admitted that she had been dealing drugs. Respondent filed a child-protection petition in March 2005 and the children were taken out of the home. During a psychological evaluation, the children stated that they had been disciplined by belt spanking and beatings that left bruises and bumps.

Following respondent's petition, appellant was required to undergo anger-management and chemical-dependency treatment, individual and family counseling, domestic-abuse counseling, and a psychological assessment. As part of the case plan, respondent scheduled two meetings to help appellant obtain affordable housing, but appellant failed to attend either meeting. After six months of sobriety, appellant asked to be reunified with her children. The agency social worker opposed reunification, and in court, appellant expressed ambivalence about having her children returned to her. Nevertheless, the children were reunited with appellant in August of 2005.

October 27, 2005, the children were returned to protective custody after the police found them outside late on a cold night without jackets. The children stated that they had been left alone overnight four times in the two months after reunification, and that there was very little food in the house. J.E.R. stated that his mother should go to jail for leaving them unsupervised and using drugs. Investigating officers reported that the home was "filthy and smelled of feces and urine." After this incident the children were placed in foster care and did not see appellant for four months. Respondent developed a new case plan for appellant in November 2005 focusing on chemical dependency and mental health issues.

Appellant completed an in-patient treatment program and a 20-week parenting program. Appellant has been attending individual therapy weekly since mid-2006. Appellant's case manager testified that she feels one-hundred-percent sure appellant will maintain recovery and will not have another relapse. The pre-hearing report indicates that appellant obtained housing and employment by February of 2007.

But appellant did not complete family therapy, as required by her case plan. Appellant began supervised visitation with the children in February 2006, four months after they entered foster care. The record indicates that the visits were difficult for all three children, but especially for N.D.R. After each visit, N.D.R. appeared depressed and angry, and occasionally lost urinary control. In May, after approximately three months of visitation, all three of the children's therapists recommended that visitation be suspended. At trial, the therapists acknowledged that N.D.R. was more distressed by the visits than her brothers, and the therapists for J.E.R. and S.E.R. stated that if not for her reaction, J.E.R. and S.E.R. could have continued visitation. But all of the therapists emphasized that it was in all three of the children's best interests to stop visitation because keeping the children together was an overriding concern.

There was extensive testimony by therapists for each of the three children about their special needs. N.D.R.'s therapist described N.D.R.'s behavioral and emotional problems, which include feelings of rejection and disturbing behaviors such as attempting to choke herself, sexualized behaviors, and several incidents of "smearing" feces on a wall. N.D.R.'s therapist stated that she believed that termination of appellant's parental rights would be in N.D.R.'s best interests. S.E.R.'s therapist described his trust and anger management issues and related S.E.R.'s wish to remain in foster care until he is 18. She testified that adoption is in S.E.R.'s best interests. J.E.R.'s therapist testified that J.E.R. was anxious and felt abandoned and rejected by appellant. The therapist stated that he did not have an opinion on whether reunification would be in J.E.R.'s best interests, but that he thought separating J.E.R. from the other two would be "devastating" and that the

three children should stay together no matter what. The children's guardian ad litem testified that termination of appellant's parental rights would be in their best interests.

Appellant's therapist also testified. He stated that his work with appellant focused on her ability to empathize with her children and to understand their response to her behavior. The therapist also indicated that he thought she had made progress. But he stated that "it would be right at this moment a difficult time to reintroduce the kids into . . . a relationship with [appellant]." Appellant's therapist thought that the reunification process would take at least three to four months, with family therapy as part of the transition. He acknowledged that he could not guarantee a successful reunification.

On March 28, 2007, the district court terminated appellant's parental rights to J.E.R., N.D.R., and S.E.R., concluding that "[i]n spite of [appellant's] recent progress on her case plan . . . there is clear and convincing evidence that it is the best interests of these three children to terminate [appellant's] parental rights." The district court found that another failed reunification would devastate the children, and that the three children should be kept together. The district court found that the statutory requirements of Minn. Stat. § 260C.301, subd. 1(b)(5) (2006), were met because clear and convincing evidence demonstrated that "following the children's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the children's placement." It also found there was clear and convincing evidence satisfying two alternative statutory grounds. Minn. Stat. § 260C.301, subd. 1(b)(2), (8) (2006).

D E C I S I O N

I.

Appellant argues that the evidence was insufficient to support the district court's termination of her parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (5), or (8) (2006). We conclude that the record contains sufficient evidence for termination under 1(b)(5). And because only one statutory ground is required for termination, we need not address the alternative grounds.

Appellate review of a district court's decision to terminate parental rights is "limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997). Parental rights may only be terminated for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). The district court may terminate parental rights upon clear and convincing evidence that at least one statutory ground for termination exists and that termination is in the best interests of the child. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). "This evidence must relate to conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001).

On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). But this court must "closely

inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

The applicable statute provides that "[t]he juvenile court may upon petition, terminate all rights of a parent to a child if it finds . . . (5) that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). Reasonable efforts have presumptively failed upon a showing that: (1) the child resided out of the parental home under court order for 12 of the preceding 22 months; (2) the court approved the out-of-home placement plan; (3) conditions leading to the out-of-home placement have not been corrected; and (4) the social services agency has made reasonable efforts to rehabilitate the parent and reunite the family. *Id.* Here, it is not disputed that the first two conditions have been met. Accordingly, our inquiry focuses on the third and fourth conditions.

Appellant did not overcome the presumption that conditions leading to the out-of-home placement remained unremedied. "It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent . . . [has] not substantially complied with the court's orders and a reasonable case plan . . . ." *Id.* Here, the record indicates that although appellant made progress on her case plan, she did not complete family therapy, which was a necessary step toward reunification.

Appellant acknowledges that she did not complete family therapy but argues that respondent failed to make reasonable efforts to reunite her and her children because

respondent failed to initiate family therapy. Appellant further claims that it was fundamentally unfair for respondent to suspend visitation and refuse to begin family therapy and to then argue at trial that her failure to complete family therapy provided a ground for the termination of her parental rights. We disagree.

The overwhelming evidence presented to the district court indicated that it would not have been reasonable for respondent to arrange family therapy. Reasonable efforts must be "relevant to the safety and protection of the child[ren]" and "realistic under the circumstances." Minn. Stat. § 260.012(h) (2006). Here, all three of the children's therapists determined that after three months of visitation that visitation should be suspended because it was so emotionally damaging to the children, individually and collectively. Although N.D.R. was experiencing the most distress after the visits, the therapists stressed the importance of looking at the children as a group because they "seek a great deal of comfort and strength from each other." Each therapist testified that it was the first time in their respective careers that he or she had recommended suspending visitation. Thus, the evidence supports respondent's determination that therapy would not have been realistic.

We also reject appellant's claim of fundamental unfairness regarding the suspension of visitation and failure to initiate family therapy. Appellant has admirably made significant progress in dealing with her chemical dependency and in learning to empathize with her children. But the evidence regarding the behavioral and emotional problems of appellant's children indicates that the damage to appellant's children, which resulted in suspension of visitation, was directly caused by appellant's past behavior.

And respondent's duty to make reasonable efforts to facilitate reunification was guided by the clear mandate that "the child[ren]'s best interests, health, and safety must be of paramount concern." Minn. Stat. § 260.012(a) (2006).

Moreover, the record indicates that appellant's children have significant special needs, and that when visitation was suspended, appellant was unable to articulate what those needs were, and lacked the skills needed to address them. Much of appellant's time in individual therapy has been devoted to developing empathy for her children's feelings toward her. We conclude that respondent's decision to suspend visitation and not to initiate family therapy was in the children's best interests. And because the suspension of visitation was necessitated by appellant's past conduct, it was not fundamentally unfair to appellant.

Because reasonable efforts failed to correct the conditions that led to respondent's filing the termination petition, we conclude that clear and convincing evidence supported the district court's finding that appellant's parental rights should be terminated under Minn. Stat. § 260C.301, subd. 1(b)(5).

II.

Appellant argues that there is insufficient evidence that it is in the children's best interests to terminate her parental rights. We disagree.

In any termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2006). Because of this, the district court may not terminate parental rights unless it is in the child's best interests, even if other statutory criteria for termination exist. *In re Children of T.A.A.*, 702 N.W.2d

703, 708 (Minn. 2005). Evaluating a child's best interests requires the district court to balance the child's interest in preserving the parent-child relationship, the parent's interest in preserving that relationship, and any competing interests of the child, including the child's health needs, preferences, and need for a stable environment. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). And "[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

On this record, we conclude that the district court properly determined that the children's best interests would not be served by reuniting them with appellant. By the end of trial, the children had not seen appellant for more than nine months, and had not been in her care for approximately 17 months. Appellant's therapist, who provided the most optimistic view of reunification, stated that the reunification process would take at least three to four months, and he admitted that there was no guarantee of success. Moreover, there was testimony that the failed 2005 reunification caused the children significant emotional damage. N.D.R.'s therapist testified that another failed reunification would devastate her. And J.E.R.'s therapist testified that if reunification failed it might render him "unfixable."

In addition, the trial testimony supported the conclusion that termination was in the children's best interests. Although appellant's therapist testified that she was ready to begin family therapy, he stated that because he had not met with the children, he could not determine whether they were ready to begin. Appellant's case manager, who had not met with the children, also testified that appellant was ready for reunification. But each

of the experts who had worked with the children, N.D.R.'s therapist, S.E.R.'s therapist, and the children's guardian ad litem, opined that termination of appellant's parental rights was in the children's best interests. And even though J.E.R.'s therapist did not explicitly recommend termination, he stressed the importance of keeping the three children together.

The district court stated: "It is not in the three children's best interest to risk another failed reunification. The risk of failure is significant given the anger and the amount of damage that [appellant] would have to address. The consequences of another failed reunification would be devastating on the children." We agree. We conclude that clear and convincing evidence supported the district court's decision.

Affirmed.