STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1511

In the Matter of the Welfare
of the Children of:
S. P. L. a/k/a P. M., S. C., G. A., and R. D.,
Parents.

Filed March 4, 2008
Affirmed in part and reversed in part
Worke, Judge

Kandiyohi County District Court
File Nos. 34-JV-05-528, 34-JV-07-133

John E. Mack, Mack & Daby, P.A., 26 Main Street, P. O. Box 302, New London, MN 56273 (for appellant S.P.L.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Boyd Beccue, Kandiyohi County Attorney, Amy Isenor, Assistant County Attorney, 415 SW Sixth Street, P. O. Box 1126, Willmar, MN 56201 (for respondent Kandiyohi County Family Services)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

WORKE, Judge

On appeal from the termination of her parental rights, appellant argues that the district court erred in (1) determining that clear and convincing evidence supports the findings that appellant is palpably unfit and that the county's reasonable efforts to correct the conditions leading to the out-of-home placement failed; and (2) ordering that appellant was to have no contact with her children in out-of-home placement following the termination. We affirm the termination of parental rights and reverse the no-contact order.

FACTS

Appellant S.P.L. is the mother of six children—S.L., R.D., F.G., A.L., P.L., and R.L. In December 2005, Kandiyohi County Family Services (KCFS) filed a child-in-need-of-protection-or-services (CHIPS) petition on behalf of appellant's children following a report that A.L. had been sexually abused by appellant's ex-boyfriend and a male cousin. The petition was later amended to include R.L. following her birth. At the admit/deny hearing, the district court granted a motion by the father of F.G. to intervene and gave full faith and credit to a Texas custody order granting him sole legal and physical custody of F.G. F.G. returned to Texas with his father shortly thereafter. In April 2006, appellant admitted that A.L. had been sexually abused and that her children were in need of protection or services. Following an evidentiary hearing in July 2006, the children were placed in out-of-home placement due to continuing issues regarding their care and safety while in appellant's custody. In October 2006, following a hearing

on the CHIPS petition regarding R.L., the district court adjudicated R.L. to be a child in need of protection or services.

In March 2007, KCFS filed a petition for termination of appellant's parental rights to P.L., A.L., and R.L. Permanent legal and physical custody of R.D. was transferred to his father, and S.L. was dismissed from the CHIPS petition. The petition to terminate appellant's parental rights alleged that she had neglected to comply with the duties imposed on her by the parent-child relationship, that she was palpably unfit, and that the reasonable efforts provided under the direction of the court had failed to correct the conditions that led to the out-of-home placement. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5) (2006). Following a court trial, the district court terminated appellant's parental rights to A.L., P.L. and R.L. under Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (5), 8. This appeal follows.

D E C I S I O N

Termination of Parental Rights

"[O]n appeal in a termination of parental rights case, while we carefully review the record, we will not overturn the [district] court's findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). A district court may terminate parental rights if it finds that at least one of the nine statutory criteria for termination exists. Minn. Stat. § 260C.301, subd. 1(b) (2006).

Appellant argues that the district court clearly erred in finding that she is palpably unfit. The district court may terminate the parental rights to a child if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Id., subd. 1(b)(4). The district court made extensive findings, which are supported by the record, in concluding that clear and convincing evidence exists to terminate appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4).

The district court found that appellant is unable to care appropriately for the mental or emotional needs of the children. Specifically, the district court found that appellant has "repeatedly neglected to provide the care and control necessary for the children's physical, mental, and emotional health and development." The district court also found that appellant "still has not taken on the role of gatekeeper by restricting access to her home, at the very least, while her children are present." The record shows that appellant continually left the children with individuals who had criminal records and/or an extensive history with child protection, and would leave the apartment door open, allowing anyone to just walk in, which they frequently did. Appellant failed to recognize how the presence of strangers in the home affected her children—especially A.L., who had been sexually abused. An evaluation of appellant showed that she was unable to recognize a negative pattern in her relationships and had poor insight into how her choices of partners affected the children. Following the children's removal from her home, appellant also continued to be unable to empathize with her children and

understand their emotions. Appellant would attribute the behaviors of her children to physical ailments rather than exploring other possibilities, i.e., attention-seeking, fatigue, emotional stress, etc. The district court also found that appellant failed to accept any responsibility for her part in her situation. She targeted A.L. with emotional abuse based on an apparent belief that A.L. was the cause of appellant's situation. Appellant was observed punishing A.L. through neglect and openly favoring P.L. and R.L. The district court also found that appellant acknowledged her lack of cooperation with the numerous services provided by KCFS following the out-of-home placement of the children. Appellant believed that the services only made things more difficult. Appellant also failed to show an ability to implement parenting skills by establishing boundaries and following through with consequences for bad behavior.

The district court also found that appellant was unable to provide the structure and consistency required to care for P.L. Appellant allowed A.L. to be a primary caregiver to P.L. On one occasion, A.L. told a social worker visiting appellant's home that P.L. had broken her arm. The social worker observed that P.L.'s arm was in a bent position, swollen, discolored, and bruised. A.L. explained that P.L. had fallen at the playground the day before. Appellant informed the social worker that she planned to have P.L.'s arm looked at by the doctor the next week. The social worker insisted that appellant take P.L. to the doctor that day. P.L. had suffered a cracked bone that was put in a cast.

The district court also found that appellant was unable to appropriately care for R.L. Following the out-of-home placement, visitation between appellant and R.L. was separate and frequent to facilitate breastfeeding. Appellant had difficulty breastfeeding

R.L. and was witnessed being forceful in her attempts. Appellant was also provided with a bottle, water, and formula at each visit; however, appellant only fed R.L. the formula once. Appellant was convinced that the formula was giving R.L. a rash. Appellant also claimed that R.L. needed eye drops four times per day; however, the prescription label stated they were for P.L. Appellant also told the social worker that R.L. was to receive olive oil, chamomile tea, and Tylenol daily. R.L.'s physician stated that he had not been advised that appellant was administering these "remedies" to R.L, which could irritate R.L.'s gastrointestinal tract. The physician opined that the daily administration of olive oil, chamomile tea, and Tylenol is abusive and he would have concerns about R.L.'s safety in appellant's care. Appellant also brought a bottle of Acidophilus tablets with her to an appointment and informed the physician that she was giving them to R.L. The physician explained there was no medical reason to give R.L. the tablets. The physician also refused certain treatments requested by appellant for R.L., including a barium x-ray, because he believed the treatment and medications were not in R.L.'s best interests. After being placed in foster care, R.L. developed proper eating and sleeping habits and gained weight that she had lost before the placement, and her physician stated that R.L. was now "thriving."

The record contains substantial evidence to show that appellant is palpably unfit, and, therefore, the district court's findings are not clearly erroneous. Because only one statutory basis must exist to support termination and the findings are not clearly erroneous in finding that the statutory criteria of Minn. Stat. § 260C.301, subd. 1(b)(4) have been met, the district court did not err in terminating appellant's parental rights to

A.L., P.L. and R.L. Finally, while appellant does not challenge the district court's finding that the termination of appellant's parental rights is the children's best interests, the finding is supported by the record.

No-Contact Order

Appellant also argues that the district court went beyond the relief sought by KCFS in ordering that appellant have no contact with A.L., P.L., and R.L. following the termination of her parental rights. The district court ordered that appellant "shall not contact [A.L., P.L., and R.L.]" and that "[a]ny and all visitation or access between [appellant] and [A.L., P.L. and R.L.] shall immediately cease as a result of this Order." All rights appellant had to her children were terminated as of July 16, 2007. *See* Minn. Stat. § 260C.317, subd. 1 (2006) ("Upon the termination of parental rights all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated . . . ."). It appears that the district court issued the no-contact order to make it explicit to appellant that her parental rights had been terminated. However, considering that appellant has no parental rights to A.L., P.L., and R.L., and there is nothing in the record to suggest that appellant has attempted to contact the children following the termination, the no-contact order following the termination was premature. Accordingly, we reverse the grant of the no-contact order.

Affirmed in part and reversed in part.