STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1535

In the Matter of the Welfare of the Children of:
K.A.T.-K., R.W.K., and M.R.H., Parents

Filed March 4, 2008
Affirmed
Halbrooks, Judge

Anoka County District Court
File No. 02-J8-06-052246

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Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

HALBROOKS, Judge

Appellant challenges the district court's order granting permanent legal and physical custody of M.T.H. to respondent M.R.H., his father. Because there is substantial evidence to support the district court's findings that (1) the transfer of custody to respondent is in M.T.H.'s best interests, (2) social services made reasonable efforts to reunify appellant with M.T.H., and (3) the conditions that led to M.T.H.'s out-of-home placement were not corrected and the district court did not err in ordering the transfer, we affirm.

FACTS

Appellant K.A.T.-K. is the mother of M.T.H., who was born on July 16, 2003. Respondent M.R.H. is M.T.H.'s father. Appellant and respondent were never married. Appellant and R.W.K. have three daughters.[1]

While investigating appellant for check forgery, identity theft, and possession and/or sale of methamphetamine, police executed a search warrant at appellant's home and found methamphetamine and bloody syringes. Appellant admitted that the needles belonged to her and that she had been using methamphetamine. Appellant was charged with and pleaded guilty to second-, third-, and fifth-degree controlled-substance crimes.

[1] R.W.K., who is included in the caption and the pleadings, is not involved in this matter, and our references to "respondent" are to M.R.H.

M.T.H. lived with appellant and respondent at his paternal grandparents' home for the first seven months of his life and, thereafter, continued to stay there two or three nights a week. On the day the search warrant was executed, M.T.H. was being cared for at his grandparents' home. At the time of appellant's arrest, respondent was incarcerated in Wisconsin. M.T.H. remained at his grandparents' home. Appellant was advised by social services that she was not allowed any unsupervised parenting time with M.T.H. but that supervised time would be arranged once appellant provided a clean urinalysis (UA). In spite of social services' directions, appellant went to the grandparents' home and told M.T.H.'s grandfather that she was permitted to have unsupervised time with M.T.H.

Following a chemical-assessment evaluation, it was recommended that appellant complete in-patient treatment and follow aftercare recommendations. Although appellant entered an in-patient program, she was discharged without successfully completing the program because she refused to follow the recommended extended aftercare program.

Following respondent's release from jail, he met with social worker, Amy Pisula, who advised him that in order to live with M.T.H. in his parents' home, he would have to complete a rule 25 evaluation, follow recommendations, and provide random clean UAs. Due to social services' concern that appellant would take M.T.H. from his grandparents' home, resulting in a foster care placement with non-family, social services petitioned the district court for a determination that M.T.H. was a child in need of protection or services (CHIPS). Respondent admitted the petition; appellant requested a trial. M.T.H. was adjudicated CHIPS on September 8, 2006, and placed in the custody of social services with his care placed with respondent, subject to the condition that respondent continue to

live with his parents. Both appellant and respondent were provided with case plans. Respondent fully complied with his plan, but appellant did not.

Respondent subsequently moved for a transfer of permanent custody of M.T.H. At the time of the permanency hearing, M.T.H. had been living in his grandparents' home for the preceding 12 months and had been in respondent's care for 10 of those 12 months. The district court concluded that transfer of custody of M.T.H. to respondent was in M.T.H.'s best interests, that social services had made reasonable efforts to reunify M.T.H. with appellant, and that the conditions that led to out-of-home placement had not been corrected by appellant. As a result, the district court granted respondent permanent legal and physical custody of M.T.H. and dismissed the CHIPS petition. This appeal follows.

D E C I S I O N

In permanent-placement cases, "the reviewing court determines on appeal whether the [district] court's findings address the statutory criteria and are supported by 'substantial evidence,' or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). This court accepts the district court's findings of fact in support of a permanent-placement decision unless they are clearly erroneous, "regardless of whether the findings are based on oral or documentary evidence." *Id.* at 261-62; *see also* Minn. R. Civ. P. 52.01. "The evidence and its reasonable inferences must be viewed in the light most favorable to the prevailing party." *A.R.G-B.*, 551 N.W.2d at 261.

CHIPS cases are controlled by Minn. Stat. § 260C.201 (2006). Under the statute, the district court has an option to place the child with the noncustodial parent and set conditions on that placement. Minn. Stat. § 260C.201, subd. 1(a)(1)(iii). When a child is placed with a noncustodial parent, the responsible social-services agency must create a case plan in order to either keep the child with that parent or reunify the child with the custodial parent. *Id.*, subd. 6(b).

When a child is placed in foster care or in the care of a noncustodial parent under Minn. Stat. § 260C.201, subd. 1, generally the district court "shall commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent." *Id.*, subd. 11(a). If the district court orders permanent placement of the child out of the home of the parent or guardian, its order must include the following detailed findings:

> (1) how the child's best interests are served by the order;
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> (2) the nature and extent of the responsible social service agency's reasonable efforts . . . to reunify the child with the parent or guardian where reasonable efforts are required;
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> (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
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> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Id., subd. 11(i). Appellant argues that the district court made findings of fact that are unsupported by the record when it found that (1) it is in M.T.H.'s best interests to stay with his father, (2) social services made reasonable efforts to reunify M.T.H. with

appellant, and (3) appellant failed to correct the conditions that led to M.T.H.'s out-of-home placement.

I.

"The paramount consideration in all proceedings concerning a child . . . found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2 (2006). Here, after extensive review of the record, the district court found that appellant "has been unable to demonstrate a consistent ability to place M.T.H.'s needs above her own or to make child centered decisions." That determination is well-supported by this record.

After M.T.H. was placed with his paternal grandparents, appellant falsely advised M.T.H.'s grandfather that she was allowed to have unsupervised parenting time with M.T.H. In addition, M.T.H.'s grandmother testified that police officers once appeared at her home after appellant called and falsely claimed that the grandparents had kidnapped M.T.H. The district court noted that appellant's behavior "jeopardized M.T.H.'s placement in his grandparent's home and evidenced her inability to place the needs of her child above her own." The district court further stated that appellant was "more intent upon manipulating social services and trying to make [respondent] look bad than focusing on her own recovery and mental health issues." None of the professionals involved had recommended that M.T.H. have unsupervised visits with appellant by the time of trial.

Respondent had been substance-free for the 12 months before trial. The district court noted that respondent owns a trucking business, where he had been working 40-45

hours a week. Respondent's parents provided daycare for M.T.H. while respondent worked. But respondent functioned as M.T.H.'s primary caregiver; and the guardian ad litem testified that M.T.H. consistently went to respondent to have his needs met.

Summarizing its best-interests determination, the district court stated:

> MTH has lived in a stable, drug free home with [respondent] for the last ten months. MTH has developed a strong bond with [respondent] and [respondent] is capable of meeting [MTH's] emotional and physical needs and has demonstrated an ability to place MTH's needs above his own needs. The therapist indicated that MTH is flourishing in this placement and is being provided with love, affection and security. It is in MTH's best interests to continue to remain in the care of [respondent] on a permanent basis. It would not currently be in MTH's best interest to return to the care of [appellant]. [Appellant] recently experienced a relapse and refused to admit the relapse[] until shortly before trial. [Appellant's] sobriety is new and she needs to prove she can remain sober on a long term basis. [Appellant] has not demonstrated that she can provide MTH with a stable, drug-free environment at present. Not only is [appellant's] sobriety relatively new, but [appellant's] oldest daughter is residing in [appellant's] home and she also has addiction issues and she has not demonstrated sobriety.

II.

The district court also addressed the nature and extent of the efforts that social services made to reunify M.T.H. with appellant. Minn. Stat. § 260.012(f) (2006) defines reasonable efforts as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." To demonstrate that it has made reasonable efforts, the social services agency must show that

> (1) it has made reasonable efforts to prevent placement of the child in foster care;
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> (2) it has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify the child with the child's family at the earliest possible time;
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> (3) it has made reasonable efforts to finalize an alternative permanent home for the child, or
>
> (4) reasonable efforts to prevent placement and to reunify the child with the parent or guardian are not required.

Minn. Stat. § 260.012(f). "Whether efforts to reunite the family are reasonable requires consideration of the length of time the county has been involved with the family as well as the quality of effort given." *In re Children of Wildey*, 669 N.W.2d 408, 413 (Minn. App. 2003) (quotation omitted), *aff'd as modified*, 678 N.W.2d 49 (Minn. 2004).

A. Social Services Efforts

The district court found that appellant was provided with a case plan that included substance-abuse treatment (both in-patient and aftercare), random UAs, a psychological evaluation, and a focus on obtaining stable housing. The district court acknowledged the progress that appellant had made—by attending therapy sessions and trying to get sober. But the district court also noted appellant's behavior that evidenced her inability to place M.T.H.'s needs above her own. While appellant contends that she completed treatment, the district court found that appellant was not fully compliant with her plan and that she did not successfully complete in-patient treatment because she refused to follow an aftercare recommendation, was not candid with her therapist, and relapsed on multiple occasions in October and November 2006. Ultimately, the district court concluded that "[appellant] was provided with the appropriate services but . . . remains unable to care for MTH for the reasonably foreseeable future."

Social services also created a case plan for respondent. In contrast to appellant, respondent did comply with all aspects of his case plan. In noting respondent's full compliance with his plan, the district court stated:

> [Respondent] has continued to reside in his parent's home with MTH, has taken MTH to therapy and participated in therapy as directed by MTH's therapist, provided clean random UA's, completed aftercare and a relapse prevention program, stopped associating with people who are using, attended AA and obtained a sponsor and has completed a psychological evaluation. Recently, after [appellant] and her family made allegations that [respondent] was using chemicals, he provided a hair follicule test which further substantiated for the Court the [respondent's] sobriety.
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> 10. MTH is doing extremely well in [respondent's] care. Melissa Marquardt, the Guardian ad Litem, has observed MTH with [respondent] and testified that MTH views [respondent] as his primary caregiver as demonstrated by the fact that MTH consistently goes to [respondent] to have his needs met. While MTH and [respondent] live in the paternal grandparent's home, [respondent] is the primary caregiver for MTH. [Respondent] bathes, dresses, feeds and puts MTH to bed at night. [Respondent] is also primarily responsible for taking MTH to medical appointments and has consistently taken MTH to therapy. MTH's paternal grandmother only provides caretaking responsibilities for MTH while [respondent] is working. [Respondent] testified that he owns a business, Shaw Trucking, where he works forty to forty-five hours per week. [Respondent] plans on purchasing a home for himself and MTH in Isanti, Minnesota but will continue to take MTH to his grandparent's home for daycare.

This record contains substantial evidence to support the district court's findings and its determinations that social services made reasonable efforts to reunify appellant with M.T.H. that were not successful and that appellant had not corrected the conditions that led to M.T.H.'s out-of-home placement.

B. Decision not to Extend Hearing Date

Appellant also argues that because social services did not recommend an extension of the hearing, it did not make a reasonable effort to reunify appellant and M.T.H. When a child is placed in the care of a noncustodial parent, generally the district court "shall commence proceedings to determine the permanent status of a child not later than 12 months after the child is placed in foster care or in the care of a noncustodial parent." Minn. Stat. § 260C.201, subd. 11(a). When the child is under eight years of age, the district court must set a permanency hearing within six months of placement out of the home "to review the progress of the case, the parent's progress on the out-of-home placement plan, and the provision of services." *Id.*, subd. 11a(a).

If at the hearing the district court finds that the custodial parent has been complying with his or her case plan and maintained contact with the child, and the child would benefit from reunification, the district court may either return the child to the custodial parent's home or continue the case for six months. *Id.*, subd. 11a(c)(1). If the district court finds that the parent is not complying with the out-of-home placement plan or is not maintaining regular contact with the child, the "court may order the responsible social services agency to develop a plan for permanent placement of the child away from the parent." *Id.*, subd. 11a(c)(2).

Appellant argues that the February 2007 hearing was premature because six months had not passed between the CHIPS adjudication and the hearing, which commenced on February 6, 2007. But the date of the child's out-of-home placement "is the earlier of the first court-ordered placement or 60 days after the date on which the

child has been voluntarily placed in foster care by the child's parent or guardian." *Id.*, subd. 11(a). M.T.H. was initially voluntarily placed on or about May 31, 2006. Sixty days after May 31, 2006, is July 30, 2006. Six months after July 30, 2006, is January 30, 2007. We therefore conclude that the district court properly applied the statute and because the district court found that appellant had not complied with her case plan, it was not required to allow a six-month continuance under Minn. Stat. § 260C.201, subd. 11a(c)(1).

Affirmed.