STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1675

In the Matter of the Welfare of the Child of: S.L., Parent.

Filed March 4, 2008, 2008
Affirmed
Stoneburner, Judge

Hennepin County District Court
File Nos. 27JV071303

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

Michael O. Freeman, Hennepin County Attorney, Michelle A. Hatcher, Assistant County Attorney, Suite 1210, 525 Portland Avenue, Minneapolis, MN 55415 (for respondent Hennepin County)

Bruce Jones, Anne E. Kanyusik, Faegren & Benson, L.L.P., 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901 (for guardian ad litem Virginia Amis)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Willis, Judge.

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

STONEBURNER, Judge

On appeal from termination of her parental rights (TPR), appellant mother argues that the district court abused its discretion in evidentiary rulings and that there is insufficient evidence to support any of the three statutory grounds on which the district court based TPR. Because any abuse of the district court's broad discretion in

evidentiary rulings was harmless in this case, there is clear and convincing evidence that appellant failed to abide by the duties of the parent and child relationship, and reasonable efforts failed to correct conditions leading to the out-of-home placement, we affirm.

D E C I S I O N

I. Evidentiary issues

Fifteen-year-old appellant S.L. argues that the district court abused its discretion and denied her right to a fair trial by: (1) failing to consider evidence that became available from respondent Hennepin County Child Protection (the county) after her TPR trial; (2) refusing at trial to admit an exhibit that indicated that the county was seeking adoptive parents while purporting to seek reunification of S.L. with her baby; (3) allowing unwarranted leading questions; and (4) admitting hearsay and documents without proper foundation. Absent an erroneous interpretation of the law, the question of whether to admit evidence is within the district court's discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at 46 (quotation omitted).

a. Post-trial submissions

The TPR trial took place in April and May 2007. The TPR order is dated June 25, 2007. The county provided three documents to S.L.'s attorney after the trial was completed. On June 11, 2007, the county provided a May 24, 2007 individual-education-plan (IEP) report from S.L.'s school stating that S.L. is not in need of special-education services. On June 26, 2007, the county provided a January 9, 2007 report by Dr. Adam

Fox, a psychiatrist who evaluated S.L. in December 2006, ruling out a diagnosis of attention-deficit/hyperactivity disorder (ADHD). On July 10, 2007, the county provided a one-page progress report in the companion child-protection case involving S.L. and her mother, verifying that S.L. was not in need of ADHD medication. In her post-trial motions, S.L. asked the district court to consider these documents, but the district court declined to do so.

S.L. concedes that granting a request to consider evidence developed after a case is submitted to the fact finder amounts to reopening a case, a decision which is reviewed for abuse of discretion. *See State v. Daniels*, 361 N.W.2d 819, 831 (Minn. 1985). S.L. argues that the district court relied heavily on the testimony of the permanency worker and the psychological evaluator's report in making its findings, and that this testimony greatly emphasized S.L.'s possible ADHD diagnosis and her mother's failure to enroll her in an ADHD medication trial. S.L. argues that she was prejudiced by the district court's failure to reopen the record in this case to consider these documents, because they weigh against the testimony given at trial.

But Dr. Fox's report is consistent with S.L.'s mother's testimony that Dr. Fox did not recommend ADHD medication for S.L. or opine that S.L has ADHD. The district court did not make any findings to the contrary, and any findings to the contrary would not be supported by the record. There was testimony at trial that S.L.'s school district was going to assess whether she was eligible for special-education services, but the district court did not base any findings on a need for special-education services. The district court credited the testimony of the social workers and the guardian ad litem,

based on their personal observations, that S.L. is immature for her age, maintains inappropriate relationships with men, fails to complete parenting tasks, depends on others to care for the baby while she pursues teenage interests, has behavioral problems, has boundary issues, has not improved her parenting skills despite numerous services provided over ten months, and that, overall, her participation in services has not corrected the conditions leading to out-of-home placement.

Because the district court did not express a specific concern about S.L.'s need for medication or special education in its findings, we cannot conclude that it abused its discretion in denying the request to reopen the record to consider the documents provided after the trial. Additionally, we conclude that S.L. has failed to demonstrate any prejudice from the district court's refusal to admit the additional evidence.

b. Proposed exhibit 25

S.L. argues that the district court abused its discretion by failing to admit a document signed by S.L.'s aunt and her husband indicating their willingness to adopt S.L.'s baby in the event S.L.'s parental rights were terminated. The document was excluded from evidence as a discovery sanction because it was not disclosed on an exhibit list. S.L. argues that the document should have been received because it is consistent with her theory that the county was focused on adoption and not reunification. S.L. contends that excluding the document as a discovery sanction was not warranted. S.L. asserts that the district court denied her due process right to a fair trial by not admitting the proposed exhibit. We disagree.

The district court allowed testimony from S.L.'s aunt about the document, and the record is clear that the county was pursuing concurrent planning by identifying a relative adoptive placement while pursuing reunification as it is required to do under Minn. Stat. § 260C.213 (2006). The district court's failure to admit the document did not prejudice S.L. and was not an abuse of discretion.

c. Leading questions

S.L. contends that the district court abused its discretion by allowing the state to use leading questions in its examination of witnesses. S.L. argues that the "unending succession of 'yes' and 'no' answers from the agency witnesses makes clear who the real witness was – agency counsel." S.L. contends that for this reason she did not receive a fair trial. The record reflects that the district court overruled most of S.L.'s frequent objections to leading questions, but asked the county to rephrase some of its questions.

Minnesota Rule of Evidence 611(c) provides that "[l]eading questions should not be used in direct examination of a witness except as may be necessary to develop the witnesses testimony." But "[t]he use of leading questions is left to the discretion of the trial court." Minn. R. Evid. 611(c) 1977 comm. cmt. When it comes to the issue of presentation of testimony, "[t]he trial court's decisions with respect to when leading questions will be permitted will not be reversed in the absence of a clear abuse of discretion." *Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672, 679 n.7 (Minn. 1977).

Minnesota courts have outlined the proper use of leading questions, including in preliminary examinations, as to matters not in dispute, or with hostile, young, language-

handicapped, or incompetent or near incompetent witnesses. *See, eg.*, *Lestico v. Kuehner*, 204 Minn. 125, 130-31, 283 N.W. 122, 126 (1938) (involving preliminary matters not in controversy); *State v. Newman*, 93 Minn. 393, 394, 101 N.W. 499, 500 (1904) (involving a young complainant); *Skinner v. Neubauer*, 246 Minn. 291, 295, 74 N.W.2d 656, 659 (1956) (regarding an adverse party); *Kugling v. Williamson*, 231 Minn. 135, 140, 42 N.W.2d 534, 538 (1950) (involving a language handicap).

In this case, the record reflects that many of the county's leading questions to which appellant objected related to preliminary issues or matters not in dispute. This was a trial to the district court, which is capable of determining the appropriate weight to be given to substantive testimony elicited by leading questions. By instructing the county to rephrase questions, the court demonstrated that it understands the appropriate use of leading questions. A district court's failure to limit leading questions to the appropriate circumstances may lead a litigant to perceive that the testimony is being presented by counsel rather than by witnesses. But given the volume of substantive testimony in this case that was not elicited by leading questions, we disagree with S.L.'s perception that she was denied a fair trial and conclude that any abuse of discretion by failing to control the use of leading questions was harmless.

d. Hearsay and lack of foundation

S.L. also asserts that the district court abused its discretion by allowing the county to admit hearsay evidence and evidence that lacked foundation. S.L.'s counsel brought a motion in limine objecting to most of the written reports offered by the county and objected at trial to most documents and related testimony on the grounds of hearsay

and/or lack of foundation. The district court denied S.L.'s motion in limine prior to trial and overruled counsel's objections at trial.

Generally, evidence admissible in juvenile-protection proceedings is that which is admissible under Rules of Evidence. Minn. R. Juv. Prot. P. 3.02. Reports that the juvenile court may consider before making a disposition, terminating parental rights, or appointing a guardian are listed at Minn. Stat. § 260C.193, subd. 2 (2006).[1] "Under Minn. R. Evid. 803(6), reports of social workers and psychologists are admissible as business records." *In re Welfare of J.K.*, 374 N.W.2d 463, 467 (Minn. App. 1985) (citations omitted), *review denied* (Minn. Nov. 25, 1985).

The documents that the district court received over S.L.'s objections include: (1) a Hennepin County Mental Health Center psychological evaluation; (2) a letter from S.L.'s school; (3) letters to the county and a related diagnostic assessment from S.L.'s therapist; (4) a Genesis II program report and parenting assessment; (5) a Reuben Lindh progress report; and (6) a Reuben Lindh summary report.

The record reflects that the district court met with counsel prior to trial to discuss exhibits, heard objections to the exhibits, and concluded that the county's social workers could lay the foundation to offer certain documents as business records. The record also reflects that the county attorney elicited some foundation testimony to attempt to establish that most of the objected-to documents were business records, therefore not

[1] The statute states that the district court may consider "any report or recommendation made by the responsible social services agency, probation officer, licensed child-placing agency, foster parent, guardian ad litem, tribal representative, the child's health or mental health care provider, or other authorized advocate for the child or child's family . . . or any other information deemed material by the court." Minn. Stat. § 260C.193, subd. 2.

hearsay. The foundation testimony included that the creation of certain documents was not in preparation for litigation, the purpose of the document, the date the document was created, and that it is standard practice to keep such a document in a child-protection file or rely on such a document in developing and implementing a case plan.

S.L. has not identified which documents she is challenging on appeal or the specific basis for the challenge. On this record, we are unable to conclude that the district court abused its discretion in admitting any particular document. S.L. has also failed to demonstrate that she was prejudiced by admission of any particular document.

II. Sufficiency of evidence

S.L. argues that the evidence in the record to support TPR under any of the three statutory grounds asserted in the TPR petition is not clear and convincing. Appellate review of a district court's TPR decision 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). And the legislature has also emphasized that

> The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the

> child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Minn. Stat. § 260C.001, subd. 2 (2006).

"[TPR] will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). "Th[e] 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). "Considerable 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).

a. Failure to comply with duties imposed by parent-child relationship

When it is in the best interests of the child, Minnesota law permits TPR on clear and convincing evidence

> that the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health

> and development, if the parent is physically and financially able.

Minn. Stat. § 260C. 301, subd. 1(b)(2) (2006). Because S.L. is a child who remains in need of parenting, it is undisputed that she is unable to provide food, clothing, and shelter for her baby. S.L.'s mother is willing to continue to provide for these physical needs, including transportation necessary to get the baby to appropriate third-party care. The district court's focus was on whether S.L., as primary parent, will be able to keep the baby safe and provide appropriate parental care, control, and education for the baby's mental and emotional health and development.

S.L. and her baby were removed from S.L.'s mother's care and placed together in foster care because S.L., who is unsupervised at night while her mother is working, left the newborn alone in the apartment. Out-of-home placement was also initially based on clutter in the apartment that posed a danger to an infant or toddler.

S.L. argues that, since then, she has fully complied with her case plan. She completed the parenting assessment, engaged in parenting education, underwent a psychological evaluation, faithfully attended individual counseling, had a psychiatric evaluation to rule out ADHD, and she remained enrolled in school throughout the proceedings. Nonetheless, there is clear and convincing evidence that throughout the case plan, S.L. demonstrated an inability to abide by household and school rules, and S.L. failed to demonstrate that she is able to provide any appropriate parental control or nurturing for her child. While S.L. was in joint foster care with her baby, she once left the baby sitting on a kitchen counter while she prepared a bottle and more than once

engaged in screaming and yelling while holding the baby. S.L. also had trouble following through on routine care tasks, and frequently got any adult who was present to finish taking care of the baby while S.L. pursued her own interests.

There is also clear and convincing evidence in the record that, despite the parenting assistance provided through the case plan, S.L. is essentially ignorant about child development. There is no indication that S.L. appreciates the role of a parent in the education and emotional development of a young child, let alone how she intends to provide such care. S.L. testified that she believes she is currently capable of parenting, and she responded to her own counsel's leading questions that she would accept and follow guidance from others. Yet she was unable to do so when she was in foster care with her aunt and had to be separated from the baby for the baby's safety. The record also reflects that during visitation, S.L. interacted with her baby as one child would with another, not as a parent would interact with a child.

Overall, the record contains clear and convincing evidence to support the district court's conclusion that, due to her immaturity, S.L. has neglected to comply with the duties of parenting and that she will not be able to develop the necessary parenting skills in the near future. When she has matured, S.L. may make a wonderful mother, but her baby's current need for a parent cannot be put on hold during that process.

b. Additional statutory bases for TPR

Because at least one statutory ground for TPR is supported by clear and convincing evidence in the record we need not address the additional statutory bases for TPR. We note, however, that much of the same evidence that supports termination under

section 260C.301, subdivision 1(b)(2) also supports TPR under section 260C.301, subdivision 1(b)(5) (2006) (failure of reasonable efforts to correct the conditions leading to out-of-home placement). S.L. does not argue that the county failed to provide reasonable efforts to facilitate reunification. Her argument is that because she engaged in or completed most of the services provided by the county, reunification should occur. But, as discussed above, S.L.'s participation in the services did not improve her ability to parent. Both the social worker and the guardian ad litem testified that S.L.'s parenting skills did not improve at all despite the numerous services provided.

S.L. also contends that the county was more focused on TPR and adoption than on reunification, as evidenced by early identification of S.L.'s aunt and her husband as potential adoptive parents. This contention is without merit. The county was required by statute to engage in concurrent permanency planning and to notify S.L. that such planning was occurring and that there are mandatory timelines for permanency planning. *See* Minn. Stat. § 260C.213 subds. 1, 3 (2006) (requiring the responsible social services agency to develop an alternative permanency plan while making reasonable efforts for reunification of the child with the family, and requiring that such planning involve the parents and "full disclosure of their rights and responsibilities; goals of concurrent permanency planning; support services that are available for families; permanency options; and the consequences of not complying with case plans"). The record demonstrates that the county continually made S.L. aware of this process to the point that she asked the social worker to stop talking about it because she fully understood.

We agree with S.L., however, that the record does not support TPR under Minn. Stat. § 260C.301, subd. 1(b)(8) (2006) (a finding that the child is neglected and in foster care). A child is neglected and in foster care if: (1) the child has been placed in foster care by court order; (2) the parents' circumstances, condition, or conduct is of a type that it is impossible to return the child to the home; and (3) the child's parents have "failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child." Minn. Stat. § 260C.007, subd. 24 (2006). In *In re Welfare of M.G.*, this court outlined five factors to aid assessment of this statutory provision: (1) do the present conditions prevent return of the child?; (2) how long has the child been in foster care?; (3) has there been a failure to make reasonable efforts to correct neglectful conditions?; (4) has the public agency made reasonable efforts and have the necessary rehabilitative services been available?; and (5) would additional services be effective to bring about lasting parental adjustment and return of the child within an ascertainable period of time? 407 N.W.2d 118, 123 (Minn. App. 1987).

Although the district court did not discuss these factors, there is clear and convincing evidence in the record that the child has been in foster care beyond the permanency timelines, and, despite reasonable efforts, cannot be returned to S.L.'s care at this time or in an ascertainable period of time. But the record does not support a finding that S.L. failed to make reasonable efforts to correct the neglectful conditions or failed to meet reasonable expectations with regard to visiting the child. The record demonstrates that, considering her maturity level, S.L. made reasonable efforts to complete her case

plan. She faithfully visited her baby and her inability to parent is not due to lack of love for her child or a refusal to participate in services offered. Testimony established that S.L.'s inability to parent is primarily due to her own immaturity, and there is evidence in the record that S.L. may be more immature than others her age. But there is no evidence that she willfully or unreasonably failed to mature or master parenting skills. This is an unfortunate case of a child with a baby; fairness requires recognition of the efforts that S.L. made to become an adequate parent at a very early age.

We conclude that the record does not support TPR under Minn. Stat. § 260C.301, subd. 1(b)(8). The outcome remains the same, however, because the county proved the other statutory basis for TPR by clear and convincing evidence.

III. Best interests of the child

S.L. did not challenge the district court's finding that TPR is in the best interests of the child in this case, and the record contains clear and convincing evidence to support this finding.

Affirmed.