STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1897

In the Matter of the
Welfare of the Child of: N.B., Parent.

Filed May 13, 2008
Affirmed
Crippen, Judge[*]

Hennepin County District Court
File No. 27-JV-07-3288

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant N.B., a 24-year-old unmarried mother, challenges the termination of her parental rights to her fourth child, following terminations in 2005 and 2006 of her rights

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

to her first three children. Appellant argues that (1) the record does not provide sufficient evidence to support the district court's findings justifying termination on statutory grounds and under a best interests analysis, and (2) the district court deprived her of a fair trial by relying on inadmissible evidence. Because there is sufficient evidence to support the findings and there is no merit to other assertions made by appellant, we affirm.

FACTS

Appellant has given birth to four children. M.B., the fourth, was born on March 21, 2007. M.P., also 24 years old, is the father of appellant's first three children and is alleged to be the father of M.B.; he has not appealed termination of his rights respecting M.B.

Appellant's first child was born in March 2002. In her second year, the child suffered a life-threatening injury to her liver as a result of a blunt force trauma, such as a hard punch or kick to her lower abdominal area. Appellant's second child was born in October 2003. In February 2004, the first-born child sustained fractures on both her left and right collar bones and her left and right upper arms as a result of blunt force trauma intentionally inflicted. The district court terminated all parental rights of appellant and M.P. to the two children in March 2005 upon proof of parental neglect and unfitness, and the failure of reasonable efforts to correct dangerous conditions. The court determined that although appellant had complied with numerous case plan services, it appeared that it would take a very long time for her to address and correct her issues regarding her own abuse as a child and her violent relationship with her father, and that her violent relationship with M.P. was likely to continue. The court also found that appellant had

significant anger and emotional control issues. This court affirmed the 2005 termination in an unpublished opinion.

Appellant gave birth to a third child in November 2005. M.P. consented to the termination of his parental rights to this child, and appellant failed to appear at the permanency trial in September 2006. The district court involuntarily terminated appellant's rights to this child on grounds similar to those proven in 2005 and the ground of neglect in foster care. The court found that appellant failed to complete the requirements of the placement plan and did not correct any of the conditions leading to the out-of-home placement of this child.

In October 2006, one month after termination of parental rights to her third child, appellant discovered that she was pregnant with a fourth child. She began working on a private rehabilitation plan at this time because she wanted to parent this child. The plan addressed some of her continuing problems, and in the following six months she attended behavior therapy group sessions and individual therapy appointments.

M.B. was born on March 21, 2007, and placed in a shelter home two days later. At the beginning of the next week, respondent Hennepin County Human Services and Public Health Department filed a petition to terminate parental rights, treated also as a petition for a child in need of protection. At an emergency protective care hearing, the court ordered M.B. to remain in out-of-home placement and allowed appellant reasonable supervised visitation. Respondent requested relief from providing services to appellant, but the court denied this request. A social worker met with appellant on April 13 to discuss the out-of-home placement plan.

The district court held a permanency trial in June. The assigned social worker testified that she considered appellant to be a vulnerable adult who is unable to protect herself or any child. Prior to trial, appellant's individual therapist submitted a letter stating that if appellant completed her group and individual therapy, the therapist believed that appellant would be able to safely parent her fourth child. But at trial, neither the group nor the individual therapist was able to give an opinion as to whether or when appellant could safely parent her newborn child.

In August 2007, the district court issued its order terminating appellant's parental rights to M.B. on the grounds of palpable unfitness, egregious harm, and the failure of reasonable efforts to correct the conditions requiring out-of-home placement set forth in a plan provided to appellant. The court found termination in the child's best interests and denied appellant's motion for a new trial.

D E C I S I O N

A court will only terminate parental rights "for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). The district court's findings in a termination case must be supported by clear and convincing evidence addressing the statutory requirements. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). The court need find only one statutory ground to support termination if it is in a child's best interests. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396-97 (Minn. 1996).

1. Reasonable Efforts Fail

Appellant's primary argument on appeal relates to reasonable efforts. She argues that she was not given sufficient time to complete her corrective efforts, a contention

premised on the record of her progress addressing the issues given by the court as the basis for the prior terminations and the completion of the permanency trial only 72 days after M.B.'s birth. Parental rights may be terminated following a child's placement if reasonable efforts under the court's direction have failed to correct the conditions leading to the placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2006).[1]

In mid-April 2007, about three weeks after the termination petition was filed, appellant attended an out-of-home placement meeting to review and sign the case plan. The social worker testified, two months later, that appellant had not met the conditions set forth in the plan. It is presumed that reasonable efforts to correct the conditions leading to a child's out-of-home placement have failed when a child who is under age eight has resided out of the parental home for six months and the parent has not substantially complied with a reasonable case plan; and this presumption does not prohibit the termination of parental rights prior to six months. Minn. Stat. § 260C.301, subd. 1(b)(5). Appellant argues that if she had been given the full six months from the placement date in March, she would have been given a genuine opportunity to comply with the April case plan and to demonstrate that she was correcting the conditions that led to M.B.'s placement.

[1] Reasonable efforts for reunification and rehabilitation are required by the responsible social services agency except upon the court's determination that a petition has been filed stating a prima facie case that the parent has subjected a child to egregious harm or the parent's rights to another child have been terminated involuntarily. Minn. Stat. § 260.012(a)(1), (2) (Supp. 2007); *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251 (Minn. App. 2003). Given the district court's March 26 requirement that respondent provide services notwithstanding the prior involuntary terminations, we examine appellant's claim on the reasonableness of services actually provided.

Appellant contends that the therapy she received from October 2006 through May 2007 demonstrates that reasonable efforts were correcting the conditions that led to the out-of-home placement of her first three children and M.B. In particular, appellant claims that she presented sufficient evidence to show that she is resolving her anger and emotional control issues and that she has terminated her dependent relationship with her partner, M.P., who previously abused her and one of her children, the primary bases for the prior terminations. Appellant asserts that six months after M.B.'s birth she would have been in the third phase of group therapy, on medication for her depression, and further along in a parenting group.

Appellant cites *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996) in support of this position. Although the court in *S.Z.* affirmed a decision that additional services were not likely to bring about lasting parental adjustment, permitting return of the child to his parent within a reasonable period of time, the court insisted that the findings primarily address current circumstances, not past history. *Id.* at 892-93. Appellant argues that her current circumstances are less threatening than was evident for the parent in *S.Z.*

The evidence in the record did not convince the district court that appellant was or soon would be able to care for M.B. or that a longer period of services was required. The court made extensive findings regarding appellant's claims, observing 33 separate incidents from October 2006 through May 23, 2007 that demonstrated appellant's angry, aggressive, and violent behavior, and her continued contact with M.P., his mother and abusive members of appellant's family. And the court found that, despite appellant's

participation in therapy programs, these problems continued, culminating in the domestic-abuse arrest of M.P. in January 2007. Even then, the court found that appellant was reluctant to press charges against M.P. and worried about him being sent to jail. Appellant also missed a court date in January 2007 to obtain an order for protection. It was not until April 4, 2007, after the birth of M.B., that appellant finally sought a restraining order against M.P. while still expressing concern for him, hoping he could go to treatment rather than jail.

The court specifically found that appellant still needed approximately 18 months to complete two phases of group behavioral therapy. Appellant claims that this finding is clearly erroneous because appellant was already in the second phase at the time of trial and needed only between nine and twelve months to finish the third phase of this therapy. Even if we accept this as true, the contention does not abrogate the court's determination that appellant needed a substantial amount of time to achieve only the potential to parent a child. The evidence suggests that only after completion of behavioral therapy, a year or more hence, was it even possible that appellant might be able to parent her child, and until the child could be reasonably returned to appellant, she would not be able to provide a safe, non-abusive environment for M.B.

The court found that the evidence of appellant's improvement, characterized by a therapist as a breakthrough, did not show "improvement that indicates [appellant] is nearing or reaching the ability to parent a child in the reasonably foreseeable future." The court found that neither of the two therapists could give an opinion as to whether or

when appellant could safely parent her newborn child due to the difficulty of treating her borderline personality disorder.

The county attorney is required to file a termination of parental rights petition within 30 days of a determination by the responsible social services agency that either a child's sibling has been subjected to egregious harm or a child's parent has lost parental rights to another child involuntarily, both factors present at M.B.'s birth. Minn. Stat. § 260C.301, subd. 3(a) (2006). A trial on a termination of parental rights should take place within 90 days of the petition—in this instance no later than June 26, 2007. Minn. R. Juv. Prot. P. 39.02, subd. 1(c). Appellant had been given extensive assistance since 2003—she had been given nearly two years in her first child protection case and approximately ten months to comply with the placement plan she received after the birth of her third child in November 2005. Appellant failed to attend the September 2006 termination trial involving her third child that occurred just six months prior to M.B.'s birth. Appellant's history with previous efforts to reunite her with her three other children argues against delay. "Further, the best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents within the foreseeable future." *S.Z.*, 547 N.W.2d at 893.

The court's findings that reasonable efforts were made to return M.B. to appellant's home and that appellant failed to correct the conditions that led to the out-of-home placement are amply supported by the evidence, despite the short window of

opportunity afforded appellant in this third child protection case in four years and the progress made by appellant in her therapy.

2. Other Grounds

A. Presumption of Palpable Unfitness

A parent is presumed palpably unfit to parent a child if that parent's rights to parent one or more other children have been involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4) (2006). Appellant does not dispute that the presumption applies to her case but contends that the district court erred in requiring more evidence to rebut the presumption than is permitted by Minn. R. Evid. 301 (stating a burden to present evidence to meet a presumption does not shift the burden of proof). Appellant argues that once she rebutted the presumption of unfitness by presenting the testimony of therapists evidencing her future ability to parent, respondent failed to prove palpable unfitness by other clear and convincing evidence.

This court has previously addressed this argument and concluded that rule 301 does not conflict with its previous applications of the presumption of parental unfitness. This court stated that "[i]n the context of termination-of-parental-rights cases, the assumed fact is *unfitness*" and that "[a]lthough the burden of persuasion remains with the county, to rebut the presumption a parent must introduce sufficient evidence that would allow a factfinder to find parental *fitness*." *In re Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007).

An appellate court reviews findings regarding the unfitness presumption for clear error. *Id.* at 554-56. The district court's finding that the presumption was not rebutted is

supported by appellant's failure to present any competent evidence of her fitness to parent. At trial, neither therapist who had provided services to appellant could give an opinion as to whether or when appellant could safely parent her newborn child. The group therapist testified that she had no experience with appellant as a parent, and the individual therapist testified that she was not sure if she could speak to appellant's parenting ability.

Appellant claims that evidence demonstrating that she was resolving the problems that prevented her from safely parenting her children was competent evidence of her fitness. But evidence of her attempts, as the district court found, is not evidence of her fitness to parent in the foreseeable future. This finding is amply supported by the evidence in the record. Appellant failed to present evidence that she had overcome her significant mental health challenges related to parenting and failed to fully address her anger problems. Compliance alone is not sufficient to rebut the presumption, and appellant did not even fully comply with her case plan. We conclude that the district court did not clearly err in finding that appellant did not rebut the presumption of palpable unfitness.

B. Egregious Harm

Parental rights may be terminated if a child has experienced egregious harm in the parent's care which is of a nature, duration, and chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interests of any child to be in the parent's care. Minn. Stat. § 260C.301, subd. 1(b)(6) (2006). In its 2007 findings, the court cited the 2005 findings supporting

termination of appellant's rights to her first child on the grounds of egregious harm. These findings showed that the child suffered a potentially life-threatening blow and was later subjected to an assault that left her with multiple, serious fractures.[2] Appellant again argues that her therapy has offered her the tools and ability to safely parent her child and that the past infliction of harm on a child, when appellant was still a teenager, cannot support a current termination on this statutory ground. The district court did not clearly err in finding that a reasonable person would believe it contrary to the best interests of any child to be in appellant's care. There is more than adequate evidence to support the court's findings and conclusions on this ground.

3. Best Interests

In addition to finding a statutory ground for termination, a court must base its termination decision on the best interests of the child. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 177 (Minn. App. 1997). The court must balance the child's interests in preserving the parent-child relationship with that of the parent's and any competing interest of the child. *In re Welfare of W.L.P.*, 678 N.W.2d 703, 711 (Minn. App. 2004). The following evidence amply supports the court's conclusion that it is in M.B.'s best interests to terminate appellant's parental rights: (1) appellant will not be able to safely

[2] The Minnesota Supreme Court recently held that "to terminate the rights of a parent who has not personally inflicted egregious harm on a child, a court must find [by clear and convincing evidence] that the parent either knew or should have known that the child had experienced egregious harm." *In re Welfare of T.P.*, ___ N.W.2d___, ___, 2008 WL 1747227, at *5 (Minn. Apr. 17, 2008). The 2005 and 2007 findings meet this standard. Further, clear and convincing evidence of one statutory basis is sufficient to sustain a termination of parental rights. Minn. Stat. § 260C.301, subd. 1(b). This record provides clear and convincing evidence on two grounds in addition to egregious harm.

parent M.B. based on her continued violent relationship with M.P., her need for 12 to 18 more months of therapy, and her failure to set boundaries with family members who abuse and take advantage of her; and (2) M.B's foster parents and siblings, with whom he has developed a significant bond, can provide a safe, stable, non-abusive environment that will likely lead to a permanent placement for him.

4. Evidentiary Objections

Appellant argues that the district court erred in admitting irrelevant and prejudicial evidence concerning the prior termination cases, criminal charges against her, and M.B.'s possible adoption by the foster family; considering hearsay evidence; and admitting opinion evidence from the social worker and guardian ad litem without proper foundation. Appellant challenged the admissions of irrelevant evidence in her motion for a new trial, but raises her objection to opinion and hearsay evidence for the first time on appeal. The district court is given wide latitude in evidentiary rulings, and we review evidentiary rulings for abuse of discretion and a showing of prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-48 (Minn. 1997). Resting on these evidentiary objections, appellant asserts that the court deprived her of fair proceedings required by the constitution.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Evidence is relevant if it "logically tends to prove or disprove a material fact." *Francis v. State*, 729 N.W.2d 584, 591 (Minn. 2007). A court may exclude otherwise admissible evidence

when the danger of unfair prejudice substantially outweighs its probative value. Minn. R. Evid. 403.

Appellant argues that the court relied on "ancient history" in making its determination to terminate her parental rights to M.B. But appellant's chief argument is that she has worked hard to modify her behavior and that she has remedied the conditions that prevented her from successfully parenting in the past. The conditions that prevented her from successfully parenting in the past, evidenced by exhibits to the prior termination cases, are relevant to this determination. Evidence dating back to 2003 is not antiquated in 2007, particularly when the record shows continuing patterns of behavior that are likely to continue for an indeterminate period supporting the projected permanency of a parent's inability to care for a child. *S.Z.*, 547 N.W.2d at 893. Appellant's pattern of failing to comply with reasonable rehabilitative efforts in previous cases was relevant and material to the court's determination of her future ability to parent M.B., and the district court's findings abundantly address current circumstances as well as past history.

Appellant concedes that evidence of adoptability is not precluded as irrelevant, *Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998), but she argues that the evidence concerning M.B.'s adoptability was prejudicial and used improperly to compare her suitability to that of the proposed adoptive family. It is within the district court's discretion to consider a child's placement, especially when placed with siblings, in determining the best interests of the child. There was no finding relating appellant's suitability to that of the proposed adoptive family.

We decline to reach appellant's arguments relating to the court's admission of opinion testimony and hearsay statements because they were not preserved by objection at trial. The failure to preserve objections at the trial level waives those issues on review. *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn.1988). This rule applies to cases concerning the termination of parental rights. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 512 (Minn. 2001).

Affirmed.