STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1279

In the Matter of the Child of: A. H. G. and B. A. P., Parents

Filed February 3, 2009
Affirmed
Peterson, Judge

Kandiyohi County District Court
File No. 34-JV-07-419

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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

Sara J. Runchey, Runchey, Louwagie & Wellman, P.L.L.P., P.O. Box 1043, 533 West Main Street, Marshall, MN 56258-0843 (for guardian ad litem Murlene Gruis)

Greta Smolnisky, Michael Kinney, Smolnisky & Kinney, P.C., 414 Southwest Becker Avenue, Suite 2B, P.O. Box 1442, Willmar, MN 56201 (for appellant)

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

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

PETERSON, Judge

In this appeal from a judgment terminating her parental rights, appellant-mother argues that the district court erred by (1) finding three statutory bases for terminating her

parental rights and (2) determining that terminating her parental rights is in her child's best interests. We affirm.

FACTS

Appellant A.H.G. is the mother of M.D.P. On October 31, 2005, Kandiyohi County Family Services (KCFS) brought a petition alleging that M.D.P. was a child in need of protection or services. The petition alleged that (1) KCFS initiated a child-protection investigation after receiving a report that M.D.P.'s father, B.A.P., had talked about killing or harming M.D.P.; (2) B.A.P. had slapped M.D.P., and physically abused appellant; and (3) appellant admitted to drinking alcohol and smoking marijuana, and she suffered from mental-health issues, including delusions about having had previous children taken away by the F.B.I. On April 3, 2006, the district court adjudicated M.D.P. a child in need of protection or services.

Following a disposition hearing, the district court ordered that (1) M.D.P. remain in appellant's care under the protective supervision of KCFS and (2) appellant and B.A.P. cooperate with KCFS and M.D.P.'s guardian ad litem (GAL) by attending scheduled appointments, maintaining contact with their social worker, and signing all necessary releases for information and applications for services in the best interests of M.D.P. The district court also ordered appellant and B.A.P. to abide by the terms of KCFS's child-protection case plan. Among other things, the case plan required appellant to abstain from drug use, cooperate with the parent educator and public-health nurses, and submit to urinalysis when requested. The plan also required appellant to enforce an order for

protection against B.A.P., report B.A.P. to the authorities if he violated the order, and not allow B.A.P. to have unsupervised visits with M.D.P.

On July 17, 2006, the district court held an immediate disposition hearing. Findings of fact issued following the hearing indicate that a KCFS caseworker and the GAL "have observed, and continue to observe, conduct by [appellant] and conditions in the home that cause concern for [M.D.P.]'s health, safety and wellbeing," including cigarette butts in M.D.P.'s hands and ashes on his face, hands, and clothes. Appellant admitted that M.D.P. gets into the ashtray two to three times a week, but she did not correct the problem after service providers discussed the problem with her. Service workers also observed M.D.P. playing with sharp objects and saw evidence of bleach water on his pajamas. Appellant admitted to service workers that M.D.P. played in bleach water, including trying to put a sponge from the water in his mouth, but said that "there is not much she can do about it." Other dangerous conditions or inappropriate behavior they observed included M.D.P. playing on an outdoor balcony with railings wide enough for a toddler to fit between; M.D.P. going for long periods of time with wet and dirty diapers, requiring appellant to be prompted by service providers before changing the diapers; lack of regular mealtimes or nutritional meals; appellant's allowing a felon to stay in the home for two weeks while looking for a place to live without notifying KCFS about the arrangement; and having M.D.P. sleep in bed with appellant, rather than in a crib. The findings of fact also state that appellant missed some appointments with the caseworker and that appellant could not be reached for her required urinalysis testing.

The district court issued a new set of orders that involved safety in appellant's home, ordered KCFS to arrange for a psychological evaluation of B.A.P., and prohibited B.A.P. from residing in appellant's home without approval from KCFS and the GAL. In the memorandum that accompanied its order, the district court stated that "[appellant] is given another chance to improve the conditions in the home." The court also noted: "It is imperative for [appellant] to work with and follow the advice of her service providers. . . . If the negative conditions continue, the Court may yet determine foster care to be appropriate."

In its findings of fact issued after a review hearing on September 27, 2006, the district court described a parental-capacity examination performed by Dr. George Petrangelo, a licensed psychologist, in late August and early September. Petrangelo's report concludes that appellant "is likely experiencing extreme emotional/psychological distress and thinks poorly of her personal abilities." The report also states that appellant "is extremely overwhelmed with the responsibilities of parenting as a result of her serious mental issues, and she must focus on mental health in order to be fully available for [M.D.P.]" Based on Petrangelo's assessment, the district court recommended that appellant and M.D.P. be placed in Full-Family Foster Care (FFFC). Petrangelo expected that either appellant would make measurable improvements in her parenting, or KCFS should consider an alternative placement for M.D.P. The court ordered KCFS to investigate the availability of FFFC and allowed B.A.P. to continue with supervised visits, but prohibited him from having any contact with appellant or entering her apartment building. In its memorandum, the court concluded: "This case is at an

important crossroad. Improvement of [appellant]'s parenting ability must occur if [M.D.P.] is to thrive. If improvement is not made, and rather quickly, the Court will be forced to protect [M.D.P.] with less consideration of the parents' wishes."

On October 23, 2006, appellant and M.D.P. began participating in FFFC offered by KCFS. The district court described FFFC as

> a program whereby both mother and child reside in the home of a foster family. The foster parents mentor the mother on parenting issues and ensure the safety of the child. The mentoring occurs on an intensified, daily basis. It also provides for bonding between parent and child. It has been successful in many cases.

On April 13, 2007, nearly six months after FFFC began, the district court held an evidentiary hearing to determine the most beneficial placement of M.D.P. It noted that Petrangelo had performed another parenting assessment of appellant on January 28, 2007. Petrangelo diagnosed appellant as "having severe symptomology of mental illness, including a delusional disorder; bipolar mood disorder; substance abuse symptomology and depressive symptoms." He also found that appellant was preoccupied with leaving FFFC to return to her own apartment, placing this desire above the welfare of M.D.P. Petrangelo's report stated that "continuing FFFC had no benefit at this time and, in some respects, it was now detrimental." The GAL and the caseworker testified that appellant was unprepared to care for M.D.P. on her own and recommended placing M.D.P. in foster care with appellant living on her own. The district court terminated FFFC and placed M.D.P. in the custody of KCFS to determine placement in a suitable foster home.

The court ordered liberal visitation rights for appellant. (*Id.*). On June 25, 2007, the court approved an out-of-home placement plan.

On October 4, 2007, KCFS filed a petition to terminate appellant's and B.A.P.'s parental rights, alleging that (1) appellant substantially, continuously, or repeatedly refused or neglected to comply with duties imposed upon her by the parent-and-child relationship; (2) appellant is palpably unfit to be a party to the parent-and-child relationship because of conduct that renders her unable, for the reasonably foreseeable future, to care appropriately for M.D.P.'s needs; and (3) following M.D.P.'s placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to M.D.P.'s placement out of the home.[1] Appellant initially agreed to voluntarily terminate her parental rights on the condition that M.D.P.'s current foster parents adopt him. However, the foster parents did not proceed with the adoption, and appellant withdrew her consent.

Following a trial, the district court concluded that the three alleged statutory grounds for termination had been proved and that termination of appellant's parental rights was in M.D.P.'s best interests and terminated appellant's parental rights This appeal follows.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Accordingly, this court "exercises great caution in termination proceedings, finding such action proper only

[1] B.A.P.'s parental rights have been terminated, and he is not a party to this appeal.

when the evidence clearly mandates the result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). This court will "closely inquire into the sufficiency of the evidence to determine if it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). But "while we carefully review the record, we will not overturn the trial 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).

The district court may terminate parental rights when one or more of the statutory conditions exist. Minn. Stat. § 260C.301, subd. 1(b) (2006); *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 397-398 (Minn. 1996) (holding that the district court must find "at least one of the eight statutory conditions for termination"). If one statutory factor supports termination, this court need not address any other statutory basis that the court may have found to exist. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (refusing to address other statutory bases because the district court did not err by finding the parent palpably unfit).

I.

The district court may terminate parental rights if it finds "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) (2006). It is presumed that this factor has been met if the child has been out of the home for 12 months, the court has approved an out-of-home placement plan, the parent has not substantially complied with the court's orders or case plan, and reasonable efforts have been made by social services to rehabilitate the parent

and reunite the family. *Id.* "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotations omitted), *review denied* (Minn. Mar. 28, 2007).

Appellant argues that the evidence was insufficient to show that the conditions leading to out-of-home placement have not been corrected because the record does not show that she failed to substantially comply with the out-of-home placement plan. But although failure to comply with an out-of-home placement plan creates a presumption that conditions leading to out-of-home placement have not been corrected, it is not the only method of proving that conditions have not been corrected under Minn. Stat. § 260C.301, subd. 1(b)(5). The district court did not rely on the statutory presumption and was not required to do so.

The record supports the district court's finding that the conditions leading to the out-of-home placement have not been corrected. When terminating FFFC and placing M.D.P. in foster care, the district court noted that "Dr. Petrangelo diagnosed [appellant] as having severe symptomology of mental illness, including a delusional disorder; bipolar mood disorder; substance abuse symptomology and depressive symptoms." The court also noted that FFFC was detrimental to the treatment of appellant's mental-health issues because it displaced her normal treatment. Finally, the court noted that appellant was receiving mental-health services two times a week, which "need to continue and may even need additional time."

The evidence demonstrates that, despite the termination of FFFC and continued efforts on the part of KCFS, appellant's mental-health issues did not improve. Appellant testified at trial about continuing to hear voices in her head and that her condition improves when she is taking medication. But she also testified that she chose to buy cigarettes instead of spending either $3.10 or $6.10 per month on her medications. Also, the GAL testified that appellant did not complete her mental-health treatment program and treated the program as if she did not need it.

The district court found that appellant's "poor management of her mental illness has not been corrected despite the reasonable efforts of KCFS." The court found that appellant "received numerous services to address her mental health issues and numerous services to provide parenting assistance," but these services "have not resulted in [appellant] being able to parent independently."

Appellant's mental-health issues are part of a broader inability to put M.D.P.'s needs before her own, which was a major factor resulting in the out-of-home placement. Based on Petrangelo's report, before placing M.D.P. out of the home, the district court noted that appellant "did not understand the need to make [M.D.P.] her first priority" and placed "her own needs, wants, and desires above [M.D.P.'s]."

The evidence supports the conclusion that appellant has not learned to make M.D.P. a priority. The district court observed that appellant "had notice of the trial yet chose to forgo her medications even though her medication compliance would be a primary concern." The fact that appellant instead chose to buy cigarettes shows a continuing inability to place M.D.P.'s needs before her own. The record also reflects that

appellant purportedly ended her relationship with B.A.P. because of personal reasons, not out of concern for M.D.P.'s safety. Finally, appellant continued to use alcohol and marijuana even though doing so was prohibited by her case plan. These facts all reflect that, at the time of trial, appellant continued to demonstrate an inability to make M.D.P.'s needs a priority over her own needs.

The record also demonstrates that reasonable efforts were made to prevent the out-of-home placement, rehabilitate appellant, and reunify the family. The GAL testified about numerous programs that were provided to address appellant's mental-health needs. The GAL also testified:

> There was an in-home worker that worked with her, there was a public health nurse. She was offered parenting classes at Washington Learning Center. The social worker and I both tried to advise her on parenting skills. I don't know of any other services that—I don't know of any services that she wasn't offered.

Appellant also attended a mental-illness/chemical-dependency program to address her drug use. In addition, appellant spent six months in the FFFC program in the care of a foster family to learn proper parenting skills. But while participating in FFFC, appellant showed little interest in the program and was preoccupied with returning to her own apartment. Nevertheless, upon terminating FFFC and placing M.D.P. in foster care, the district court ordered that:

> [Appellant] shall be allowed reasonable and liberal visitation with [M.D.P.] under the supervision of the foster parent. If the [GAL] and KCFS agree, visitation may be expanded to occur in [appellant's] home, unsupervised, including overnights, without further order of the Court.

> KCFS may impose restrictions on these visits as deemed necessary for the best interests of the child.

And the out-of-home placement plan, filed on June 25, 2007, two months after M.D.P. began foster care, stated that "[appellant] will have appropriate visits during the scheduled time and work with the in-home provider during these visits to address parenting skills and tools for her child." Thus, the record demonstrates that there was a continuing, ongoing effort to provide appellant with an opportunity to correct the issues that led to the out-of-home placement.

Finally, the district court supported its decision with "individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." Minn. Stat. § 260C.301, subd. 8(1) (2006). The court found:

> [Appellant] has received numerous services that were set up by KCFS in efforts to either avoid the foster care placement or reunify the family after the foster care placement became necessary. [Appellant] described several services including [FFFC], Wrap-Around Funding, Mental Health Case Management, IMR, MI/CD groups, and financial assistance.

The court then described in detail the elements of these programs, the extent of appellant's participation in the programs, and the extent to which social workers provided other forms of assistance to appellant. These findings are sufficiently explicit and individualized to support the district court's conclusion that reasonable efforts were made

to rehabilitate appellant and reunite the family but that appellant's poor management of her mental illness has not been corrected is not clearly erroneous.[2]

II.

"In any proceeding [to terminate parental rights], the best interests of the child must be the paramount consideration. . . ." Minn. Stat. § 260C.301, subd. 7 (2006). The burden of proof required to terminate parental rights is "subject to the presumption that a natural parent is a fit and suitable person to be entrusted with the care of his child and that it is ordinarily in the best interest of a child to be in the custody of his natural parent." *In re Welfare of M.H.*, 595 N.W.2d 223, 227 (Minn. App. 1999) (quotation omitted) (citing *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980)).

The district court recognized the presumption that appellant is best suited to care for her child, stating that "both the mother and child have an interest in preserving the parent-and-child relationship because they have a bond and enjoy their time together." But the court determined that M.D.P. "needs a parent who can set limits for appropriate behavior, establish boundaries, and provide nutritious meals at predictable times. More importantly, the child needs a parent who can model appropriate decision-making skills with a particular emphasis on the importance of good mental health." The court cited appellant's risk of harm to the child due to her mental-health issues, appellant's

[2] Because we find that the district court did not err by terminating appellant's parental rights based upon her failure to correct the conditions leading to the out-of-home placement, we do not address appellant's arguments that the district court erred by finding that appellant failed to comply with the duties of the parent-child relationship and was palpably unfit to be a parent. *Children of T.A.A.*, 702 N.W.2d at 708 n.3.

trivialization of her mental-health issues, and the risk that appellant's own inability to manage her mental health calls into question her ability to manage M.D.P.'s health. Because M.D.P. needed a permanent home and appellant had failed to provide a home for him, the court concluded that it is in M.D.P.'s best interest to terminate appellant's parental rights.

Appellant argues that there is not sufficient evidence to support this conclusion. She argues that the record clearly demonstrated that she loves M.D.P.; the termination was based on speculation, such as speculation about her relationship with B.A.P.; and KCFS was simply trying to "fix" her imperfect parenting. Appellant contends that "[t]he scrutiny of [her] went beyond anything necessary in a child protection case, and went into parental preference issues over the use of high chairs, cribs, trash bins, and coffee pots."

But the record does not support appellant's arguments. The evidence demonstrates that the termination is based on more than disagreements about "parental preference." KCFS became involved with appellant and M.D.P. because of genuine concerns about unsafe conditions in the home, including B.A.P.'s presence in the home, appellant's mental-health issues, and appellant's use of marijuana and alcohol. The district court repeatedly acted with admirable regard for the presumption that appellant was a fit parent. In its first order after the issuance of a case plan, the court rejected KCFS's request to place M.D.P. in foster care, noting that, while the court "has serious concerns for the care of this child[,] . . . there were no outward signs of medical or food neglect. And, the only good way to address the nurturing issues is for mother and child to be together." And after a review hearing, the court acknowledged its fear "that if

[M.D.P.] is removed from the home of [appellant], that she will either lose interest, or not have the opportunity to practice what is being taught. The Court's hope is that if [appellant] and [M.D.P.] are together, with both more and immediate mentoring and supervision, that she will improve her parenting ability." Only after six months of failed FFFC did the court place M.D.P. in foster care. The district court did not err in concluding that it is in M.D.P.'s best interests to terminate appellant's parental rights.

Affirmed.