STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1379
A08-1380

In the Matter of the Welfare of the Child of:

S.K.B. and M.A.R., Parents.

Filed March 3, 2009
Affirmed
Schellhas, Judge

Mille Lacs County District Court
File No. 48-JV-08-333

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Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

In these consolidated termination-of-parental-rights appeals, appellant-mother argues that a past transfer of custody of three of her children was voluntary so a statutory

presumption of palpable unfitness is not applicable to her and that if such a presumption is applicable, she rebutted it. Appellant-father, who concedes that a statutory presumption of palpable unfitness is applicable to him, argues that he rebutted the presumption and that the district court did not make adequate findings that termination is in his child's best interests. We affirm.

FACTS

The child at issue in this case, D.B., was born to appellant-mother S.K.B. (mother) and appellant-father M.A.R (father) on February 4, 2008, in Kanabec County. Appellants are the biological parents of three other children born before D.B.: C.R., D.T.R., and C.C.R. On April 4, 2006, before the birth of C.C.R. and D.B., Isanti County Family Services (ICFS) received a report regarding C.R., born November 22, 2004, and D.T.R., born May 14, 2002, stating that the children's home was "filthy," that syringes and small baggies commonly used to package drugs were present in the home, and that mother had been heard asking others to obtain Vicodin for her. ICFS conducted a welfare check of the home and observed that the inside of the home was littered with dirty dishes, old food, sharp knives within the children's reach, chemicals, tools, and animal feces. D.T.R. was playing in the yard, which was "cluttered with broken glass, chemicals, car parts, and other garbage." D.T.R.'s mattress was "extremely dirty" and had no linens other than a blanket. A significant amount of animal feces was in the room. ICFS informed father, who was the only parent home at that time, that D.T.R. would be removed from the home due to the hazards observed, and that appellants must also give C.R. to ICFS. When

appellants turned over custody of C.R., she was afflicted with a sinus infection, a double-ear infection, and a possible throat infection.

C.C.R., appellants' third child, was born in October 2006, and ICFS allowed D.T.R. and C.R. a home visit with appellants so that they could bond with C.C.R. The home visit was terminated and all three children were removed from appellants' care and custody after approximately one month, when ICFS received a report that mother was arrested for DWI-child endangerment. When stopped by law enforcement, C.R. and C.C.R. were in mother's van and were "dirty, smelled of not being bathed recently, and were crying." C.R. and C.C.R. were taken to St. Joseph's Home for Children. During their police transport, the children reportedly smelled so bad that officers could not bear to open the partition between the front and back seats. C.R. had feces in the creases of her legs, and C.C.R. had severe diaper rash.

ICFS prepared individual case plans for appellants. Due to determinations of neglect and endangerment, lack of follow-through, and inconsistencies in appellants' statements, as well as appellants' pattern of behavior, ICFS decided that termination of appellants' parental rights was in the children's best interests. ICFS proceeded against appellants with a termination-of-parental-rights petition but, upon the parties' agreement, moved to dismiss the petition and made an oral motion for the district court instead to transfer legal and physical custody of the children to relatives. The district court noted that father was not an adjudicated father of the children and, as such, had "no legal custodial rights in [the] matter." The district court found that mother had failed to comply with her case plan, including that she (1) failed to maintain a safe and appropriate

home; (2) failed to maintain sobriety; (3) failed to successfully complete inpatient treatment; and (4) tested positive three times for methamphetamine. As noted by the district court, "in open court with the assistance of counsel," mother admitted to the facts alleged in the petition to transfer permanent legal and physical custody, and all parties agreed that the facts alleged in the termination-of-parental-rights petition were the same facts underlying the oral motion to transfer legal and physical custody.

The district court concluded that: (1) C.R., D.T.R., and C.C.R. were children who continued to be "in need of protection or services"; (2) mother had not "demonstrated sufficient effort and ability to correct the conditions which led to the out-of-home placement"; (3) reasonable efforts to eliminate the need for out-of-home placement had been unsuccessful; and (4) no further efforts should be made to reunite the family because such efforts had been unsuccessful in the past and continued efforts were not in the best interests of the children. The district court granted the petition to transfer permanent physical and legal custody of the three children to relatives.

The physician who oversaw the birth of D.B., appellants' fourth child, was aware that mother had a history of narcotic addiction and had lost custody of her three prior-born children, and he notified the hospital social worker before D.B. was born. A Mille Lacs County child protection worker, Lisa Rutland, was assigned to investigate what she believed was a child-maltreatment report of prenatal exposure to controlled substances and threatened injury regarding D.B. Rutland was unable to determine that D.B. had been exposed to controlled substances but she did determine that there was threatened injury. Rutland's determination was based on her investigation of appellants' criminal

and social-services history and discovery that mother was facing a controlled-substance charge in Isanti County. Rutland also reviewed the order for the transfer of custody of C.R., D.T.R., and C.C.R, and based her determination in part on the prior maltreatment reports for those children. Respondent Mille Lacs County proceeded against appellants with a termination-of-parental-rights petition.

At trial, the district court presumed that appellants were palpably unfit to be parents because of the prior Isanti County proceeding. The district court found that mother had struggled with chemical dependency for much of her adult life, and it concluded that she did not demonstrate a sufficient understanding of her chemical dependency, as evidenced by her reliance on Suboxone to treat her opiate addiction. The district court noted that Suboxone has no effect on drugs such as methamphetamine, which mother had used in the past, and that while taking Suboxone, mother had used an opiate painkiller prescribed by her dentist. The district court described Suboxone as an "experimental drug" and observed that while using Suboxone, mother did not avail herself of support groups such as Narcotics Anonymous (NA) or Alcoholics Anonymous (AA). The district court also found that father failed to demonstrate an understanding of mother's chemical addiction, which raised concerns as to his ability to safeguard the welfare of a child.

After the district court terminated appellants' rights to D.B., respondent moved the district court to amend its findings to include, among other things, specific findings that termination of parental rights is in the child's best interests. The district court issued an amended order, in which it balanced appellants' desire to maintain a parent-child

relationship with D.B. against D.B.'s need for "a home environment that is conducive to both his emotional and physical needs" and "a home environment that is stable and protective." The court found that while the uncleanliness and disorder of appellants' home was a factor in the outcome of the earlier proceedings, "the primary concern, then and now" continued to be mother's addiction. The district court added that since the earlier proceedings, appellants had "done nothing" to convince the district court that they could remedy their inadequate parenting skills, and that mother's use of opiate pain medication "indicates that the earlier underlying problems continue to exist." The district court concluded that neither mother nor father had rebutted the presumption of palpable unfitness and that terminating appellants' parental rights to D.B. is in his best interests. These appeals follow.

D E C I S I O N

On appeal, "[appellate courts] review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

> [Appellate courts] give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. *Id.* [Appellate courts] affirm the district court's termination when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child . . . .

Id. We exercise "great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). We defer to the district court's findings "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). Questions of statutory interpretation are reviewed de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001).

Section 260C.301, subdivision 1(b) (2008), provides that a parent is presumed palpably unfit to "be a party to the parent and child relationship" when the parent's custodial rights to another child have been involuntarily transferred. The parent must provide such evidence as to allow the court to "find parental *fitness*" in order to rebut this presumption. *In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (emphasis added). An appellate court reviews findings of fact for clear error. *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985), *review denied* (Minn. Nov. 25, 1985). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Mother challenges the district court's finding that the previous transfer of custody was involuntary, arguing that it was voluntary because she admitted to the facts in the ICFS petition to transfer custody of three of her children. But mother's admission to the facts in the petition to transfer custody and her "consent to the transfer did not automatically change the transfer from involuntary to voluntary." *In re Child of A.S.*, 698 N.W.2d 190, 195 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005). To

determine whether a transfer of custody was voluntary or involuntary, we "look to the record to see if there is any support for a conclusion that transfer of custody was voluntary and for good cause." *Id.*

Mother further argues that the transfer of custody was voluntary because the Isanti County district court concluded that termination was not in the children's best interests, and mother and father were granted visitation. But mother offers no authority to support her argument that these facts support a conclusion that the transfer of custody was voluntary. Mother also argues that the transfer should be deemed to be voluntary because, as she testified at trial in this matter, she assumed the transfer was voluntary. Mother's testimony about her assumption is insufficient to establish that the transfer was voluntary. As we cautioned in *A.S.*, the district courts and counsel must make a clear record that a transfer is voluntary because, without clear evidence that an agreement relinquishing parental rights is voluntary and for good cause and is not merely an admission of a ground for an involuntary placement, the presumption of palpable unfitness may not be avoided. *A.S.*, 698 N.W.2d at 196.

This court has approved two avenues through which a parent can convert an involuntary transfer into a voluntary one: (1) file a new petition articulating facts supporting good cause for the transfer; or (2) formally amend the original petition to cite to the voluntary termination statute. *Id.* at 195. In this case, mother and father pursued neither of these avenues, and mother cannot avoid the presumption of palpable unfitness because the record of the previous transfer of custody does not clearly reflect an agreement that the relinquishment of parental rights was voluntary. Mother has not

shown that the district court's conclusion that the previous transfer of custody was involuntary to be clearly erroneous.

Mother argues that the county "relied entirely upon the presumption of unfitness and offered no evidence to establish the mother and father were otherwise unfit to parent the infant." But mother appears to misunderstand that when the presumption of unfitness applies, it is the parent's burden to rebut the presumption. *A.S.*, 698 N.W.2d at 194. Accordingly, the county was not required to establish unfitness.

Mother argues that the evidence shows that she is adequately managing her opiate addiction through her use of the drug, Suboxone, and her record of attendance at her clinic support groups. Mother also argues that, contrary to the district court's findings, Suboxone is not an experimental drug. Mother is correct that the record does not contain specific evidence that Suboxone is an experimental drug. The physician treating mother for her opiate addiction, Milton H. Seifert, M.D., did not testify that Suboxone is an experimental drug—he testified that it is FDA-approved, describing it as a "new drug." Dr. Seifert testified that with the use of Suboxone, "we think that in time that dependence [on opiates] will go away," and acknowledged that there was uncertainty as to when or whether a patient could stop using the drug. Although the record reflects a medical description of Suboxone as "new," rather than "experimental," the district court's characterization of the drug as experimental was not central to its conclusion that appellants did not show that mother's drug addictions were being adequately managed. The district court found that mother did not show a "sufficient understanding of what she needs to do in order to avoid the continued use of chemical substances." The district

court based this finding in part on mother's testimony that in the summer of 2007, she was prescribed opiate pills by a dentist and she took one of the pills, despite being treated at that time for opiate addiction. The district court reasoned that if mother understood the nature of her addiction, she would have alerted the dentist to her addiction.

The district court found that mother relied too much on Suboxone *alone* to manage her addiction problems, finding that mother did not take advantage of available support groups. Although Dr. Seifert testified that mother was attending a "reasonable amount" of support-group meetings at the clinic, he defined "reasonable amount" to be "[a]t least once a month." But mother admitted that she considered NA and AA counterproductive and that she has not participated in support groups outside the clinic or voluntary treatment programs. The only support groups mother participated in were a required part of her Suboxone treatment. She engaged in the minimum amount of treatment available to her. In addition, even if mother's support-group attendance at the clinic, coupled with Suboxone use, is sufficient to address her opiate addiction, mother cites no evidence that shows that she engaged in any support groups or received any help to avoid a return to her use of methamphetamine. Mother's own testimony reflects that she tested positive for methamphetamine as recently as February or March of 2007. And, Dr. Seifert testified that the use of Suboxone does not preclude addiction to methamphetamine.

Father argues that the district court ignored appellants' "substantial efforts to improve the family living situation," in that mother delivered a healthy and drug-free baby and appellants provided "evidence of the state of the child's home as clean and appropriate." But this evidence, even if accepted at face value, does not establish error in

the district court's finding that appellants do not sufficiently understand what they need to do to manage mother's addiction problems. Appellants have failed to show that the district court's conclusion was "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *T.R.*, 750 N.W.2d at 660-61 (quotation omitted).

Father also argues that the district court erred in concluding that the termination of appellants' parental rights is in D.B.'s best interests. In a termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2006). When evaluating whether termination of parental rights is in a child's best interests, the district court must balance "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child," including a stable environment, health considerations, and the child's preferences. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Father argues that the district court summarily stated that termination is in D.B.'s best interests and did not expand on or explain the basis for this conclusion, instead apparently relying on its determination that appellants had not rebutted the presumption of unfitness. An examination of the district court's amended order shows that the court prefaced its conclusion that termination of parental rights is in D.B.'s best interests with two paragraphs in which the court states that appellants' desire to maintain the parent-child relationship "must be balanced against" D.B.'s need for a stable home environment that is free from the kind of behavior that led to appellants' loss of custody of their other

children. The district court cites, as its "primary concern," mother's addiction problems and appellants' lack of insight as to the serious nature of these problems and their failure to instill confidence that they would make the necessary corrections to remedy their inadequate parenting skills. Father's argument is without merit. The district court did not fail to explain its conclusion that termination of appellants' parental rights is in D.B.'s best interests, and that conclusion is adequately supported by the record and the findings of fact.

Affirmed.