STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0073

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

Filed July 14, 2009
Affirmed
Collins, Judge[*]

Ramsey County District Court
File Nos. 62-JV-08-1632; 62-JV-08-1758

Susan Gaertner, Ramsey County Attorney, Kathryn Eilers, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102 (for respondent Ramsey County Community Human Services Department)

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Patrick D. McGee, 18390 Irvine Avenue North, Forest Lake, MN 55025 (for appellant A.A.L.)

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, Judge.

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

COLLINS, Judge

Appellant challenges the termination of her parental rights, arguing that the district court erred by finding that appellant had not overcome the presumption that she is palpably unfit to be a party to the parent-child relationship and finding that appellant is

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

palpably unfit. Because appellant failed to overcome the presumption of unfitness and the district court's findings addressing the statutory criteria for termination of parental rights are supported by the evidence and are not clearly erroneous, we affirm.

FACTS

Appellant A.A.L. is the biological mother of two children. Her first child was removed from her care when he was six months old after police saw A.A.L. almost drop him a number of times while she was intoxicated. A.A.L. failed to comply with the Child in Need of Protection or Services (CHIPS) plan, and her parental rights were ultimately involuntarily terminated.

Because of the prior involuntary termination of parental rights, A.A.L.'s second child was removed from A.A.L.'s custody upon his birth, and the Ramsey County Community Human Services Department (the county) filed a fast-track Termination of Parental Rights (TPR) petition. In such case, the county was not required under Minn. Stat. § 260.012(a) (2008) to make reasonable efforts to reunify the child and parent or rehabilitate A.A.L. Nonetheless, at the request of her attorney, the county wrote to A.A.L. recommending that she take steps to address each of the issues previously identified in the TPR process involving her first child.

A two-day trial regarding the termination of A.A.L.'s parental rights was held at which a child-protection worker and a guardian ad litem (GAL) testified. Psychological and parenting assessment reports were also submitted. The child-protection worker and the GAL recommended terminating A.A.L.'s parental rights based on the best interests of the child. The district court adopted that recommendation, finding that A.A.L. had not

rebutted the presumption that she is palpably unfit to parent a child. The district court also specifically found that A.A.L. is palpably unfit to be a party to the parent-child relationship. This appeal followed.

D E C I S I O N

I.

One basis for terminating parental rights is palpable unfitness of the parent to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4) (2008). A parent is presumptively palpably unfit to be a party to the parent-child relationship when that parent's parental rights to one or more other children were involuntarily terminated, or that parent's custodial rights to another child were involuntarily transferred to a relative under section 260C.301, subd. 11(d)(1) (2008). *Id.*[1] "The district court need not establish an independent reason to terminate because it is the parent's burden to affirmatively and actively demonstrate her or his ability to successfully parent a child." *In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). "Although 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*." *Id.*

[1] Although Minn. Stat. § 260C.301, subd. 1(b)(4), refers to Minn. Stat. § 260C.201, subd. 11(e)(1), it has been noted that the statute should refer instead to Minn. Stat. § 260C.201, subd. 11(d)(1). *In re A.S.*, 698 N.W.2d 190, 194 n.4 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005). Minn. Stat. § 260C.201, subd. 11(e)(1), does not exist. A 2001 amendment to section 260C.201 moved the contents of paragraph (e) to paragraph (d), but section 260C.301, subd. 1(b)(4), was not amended to reflect this change. *Id*.

A.A.L. argues that she presented sufficient evidence to overcome the presumption of palpable unfitness because she demonstrated that she had "accomplished substantial gains in her growth as a person and as a mother" through evidence that she completed outpatient chemical-dependency treatment and a parenting class, demonstrated sobriety by submitting to drug testing, attended some chemical-dependency support-group meetings, started therapy, and underwent a psychological evaluation and a parenting assessment.

But evidence was presented that although A.A.L. completed the primary phase of chemical-dependency treatment, she attended only five or six recommended aftercare support-group meetings, none of which occurred in the most recent four months before the trial. Also, the child-protection worker asked A.A.L. to submit to random drug testing twice weekly, but she failed to do so; rather, A.A.L. submitted to a few nonrandom tests over a month-and-a-half period, including a 25-day span without drug testing. Further, although A.A.L. did undergo psychological testing, she complied with only two of the recommendations made by the psychologist and ignored the recommendation to regularly attend chemical-dependency aftercare meetings or other support groups. She also ostensibly completed a parenting class, but the parenting-assessment report stated that A.A.L. had "not made a significant change in her lifestyle and-or parenting development to consistently or appropriately manage her own life let alone her child's growing needs." This assessment was based in part on A.A.L.'s failure to more than minimally fulfill previous recommendations, her lack of understanding regarding the importance of compliance and follow-through to reunification with her first

child, and her inability to apply what she has learned in parenting classes to improving her choices, behaviors, and interpersonal relationships. A.A.L. also failed to present evidence that she had a plan for stable housing but rather indicated to the child-protection worker that her plans included living with different men, returning to her job in the carnival, or going back to live with her mother and stepfather, none of which appeared to the child-protection worker to be a viable option. A.A.L. had not submitted any job applications, and the child-protection worker testified that A.A.L. did not have reasonable employment plans but instead raised the possibilities of babysitting or tutoring at the school, though she does not have a high school diploma or transportation.

The district court carefully drew comprehensive findings regarding A.A.L.'s failure to rebut the presumption of palpable unfitness, including that A.A.L. (1) lacks stable housing; (2) is unemployed; (3) does not have a high school education or G.E.D.; (4) does not have reliable transportation; (5) has a history of chemical dependency and has failed to participate in recommended aftercare programs and random drug tests; (6) suffers from depression, post-traumatic stress, and anxiety leading to impulsive, angry outbursts; (7) has failed to follow through on all but two of the psychologist's recommendations; (8) does not appear to understand how her lack of stability and self-sufficiency and her failure to follow through with recommendations adversely impact her child; (9) is unable to apply parenting class information; and (10) has had unsafe relationships with men. The court also found that the GAL, child-protection worker, and psychologist determined that A.A.L. is incapable of providing appropriate care for a child and will continue to be incapable of doing so in the reasonably foreseeable future. These

findings are supported by the evidence and amply demonstrate that the district court did not abuse its discretion by finding that A.A.L. had not met her burden to rebut the presumption of palpable unfitness and that A.A.L. is palpably unfit to be a party to the parent-child relationship.

II.

"An appellate court reviews a termination of parental rights to determine whether the [district] court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004) (quotation omitted). A reviewing court defers 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). The reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

"Although the best interests of the child cannot be the sole justification for the termination of parental rights, it is an important factor to be considered by the [district] court." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). When evaluating whether terminating 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. *Id.*

In addition to the extensive findings supporting the conclusion that A.A.L. is palpably unfit to be a party to the parent-child relationship, which are discussed above, the district court found that it is in the child's best interests to terminate A.A.L.'s parental rights because the child's "need for a safe, stable, appropriate home with a parent who can meet his physical and emotional needs outweigh [A.A.L.]'s desire to parent him." The district court's findings clearly describe the lack of stability in A.A.L.'s environment, and the district court expressly stated that it weighed the child's and A.A.L.'s interests and determined that the child's need for safety and stability carried more weight. This conclusion is supported by substantial evidence in the record, as are the district court's findings addressing the statutory criteria and which are not clearly erroneous.

Affirmed.