STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0163

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

Filed August 4, 2009
Affirmed
Shumaker, Judge

Hennepin County District Court
File Nos. 27-JV-07-15460, 27-JV-06-5512

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Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

Appellant challenges a district court order terminating her parental rights to her son, A.E., claiming that the district court's findings are not supported by clear and convincing evidence. Because we conclude that (1) the record supports the district court's findings that appellant is palpably unfit to parent A.E. and failed to correct conditions leading to A.E.'s out-of-home placement; (2) the district court did not err by finding that the county's efforts to reunite appellant with her child were reasonable; and (3) the district court did not err by finding that termination of appellant's parental rights is in the child's best interests, we affirm.

FACTS

Appellant gave birth to A.E. prematurely on November 17, 2007. The hospital staff was aware that appellant had been involved with child-protection services with another of her children, and, following A.E.'s birth, they monitored appellant's ability to care for him. Medical personnel noticed that appellant failed to appropriately read the baby's cues for feeding and failed to effectuate the necessary feeding schedule. They contacted child-protection services, and, on November 27, 2007, A.E. was discharged from the hospital and immediately placed into foster care. Following an investigation, the Hennepin County Human Services and Public Health Department (County) filed a petition to terminate appellant's parental rights, alleging that appellant (1) has continuously refused or neglected to comply with her parental duties; (2) is palpably unfit to parent A.E.; and (3) has failed to correct conditions leading to A.E.'s placement

despite the County's efforts to reunite appellant with A.E. After a trial on those allegations, the district court ordered the termination of appellant's parental rights to A.E on November 12, 2008.[1] A.E. has never been returned to appellant's sole care since his initial placement in foster care.

At trial, over appellant's objection, the County introduced evidence from a previous child-protection case involving appellant and her first child, T.M. In that case, appellant was required to complete a case plan, which included securing safe and suitable housing, abiding by the recommendations of a parenting assessment, and having supervised visits with T.M. Dr. Jeanne Schur, a consultant for the County, completed a psychological evaluation of appellant in September of 2006. The evaluation showed that appellant has a "mild range of mental deficiency" and an IQ of 57, which gives her the cognitive ability of a four to eight year old. In October 2006, Kristen Vnuk, a "parenting worker" with Parent Support Project (PSP),[2] was assigned to work with appellant and T.M. During this time, Vnuk assisted appellant in financial planning, finding supportive housing, and by providing face-to-face coaching. Nevertheless, in June 2007, appellant voluntarily consented to the adoption of seven-year-old T.M. Despite the adoption, Vnuk continued working with appellant until September 2007, when appellant "fired" Vnuk and discontinued using PSP services.

[1]The father's parental rights were also terminated at this time but he did not seek further review from this court. Thus, our review is limited to whether appellant's parental rights were improperly terminated.

[2]PSP is no longer in existence due to budget cuts. PSP specialized in working with parents with cognitive limitations. A parenting worker does intensive, in-home coaching on parenting skills and daily living skills assisting with housing, budgeting, etc.

In December 2007, appellant was given a case plan to be completed before being reunited with A.E. This case plan was almost identical to her prior case plan for T.M., which ended unsuccessfully six months before the present proceedings commenced. Once again, appellant was required to obtain safe and suitable housing, undergo parenting education, work with PSP, and have supervised visits with A.E. The County again sought PSP's services to assist appellant. Vnuk assessed appellant's situation at that time, determined "nothing had changed," and declined to reopen appellant's case file. It was Vnuk's position that appellant failed in any effort to establish stable housing. In addition to the housing issue, Vnuk noted that appellant was involved with A.E.'s father, V.E., who did not support appellant in completing her case plan.

As an alternative to PSP's services, the County referred appellant to Reuben Lindh, an in-home parenting service. The County was aware that Reuben Lindh did not specialize in working with developmentally disabled adults such as appellant, but it was the only available alternative for appellant after she was denied services from PSP. Reuben Lindh provided parenting services as part of appellant's case plan, but appellant's limited cognitive level proved an impediment to her ability to learn how to safely and effectively parent a child and satisfy her case-plan requirement. Calvin McIntyre was appointed A.E.'s guardian ad litem and observed appellant's supervised visits with A.E. while at Reuben Lindh. He testified that A.E. recognized appellant but that the relationship between appellant and A.E. did not have "the strength of a typical bonded mother and child." McIntyre also expressed concern for appellant's relationships with men. He testified that appellant "suborns her own opinions in favor of what [V.E.]

wants. Even if she wanted something for [A.E.] if it were the right thing, she might be inclined to not do it if it was something [V.E.] disagreed with."

Kyungshim McNally, a 14-year veteran child-protection social worker, was assigned to be appellant's social worker on August 1, 2008. It was McNally's opinion that it is in the child's best interests to have appellant's rights terminated because "all the services that were offered to her didn't change the condition that brought in the case to Child Protection, and there's no indication that [her cognitive delay] could be corrected in the near future."

After the three-day trial, the district court concluded that (1) appellant "is palpably unfit to be a party to the parent child relationship . . . "; (2) "[r]easonable efforts have failed to correct the conditions leading to [the child's] out of home placement"; and (3) appellant "has substantially, continually and repeatedly neglected to comply with the duties imposed upon her by the parent and child relationship." The district court ordered "[a]ny and all parental rights of [appellant] . . . terminated." Appellant moved for a new trial, arguing that the statutory criteria by which appellant's parental rights were terminated were not proved by clear and convincing evidence, that she had substantially complied with her case plan, and that the County had failed to make reasonable efforts toward reunification. The district court denied the motion. This appeal followed.

D E C I S I O N

A court will terminate parental rights only 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. Minn. R. Juv. Prot. P. 39.04, subd. 1; *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). A reviewing court will give considerable deference to a district court's credibility determinations. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Appellant challenges each of the statutory grounds relied on by the district court in terminating her parental rights.

Irrelevant Evidence

Appellant argued before the district court, and now argues before this court, that the district court should not have considered and relied on evidence concerning her prior child-protection case. She contends that the evidence is irrelevant because it concerned a separate proceeding and that the evidence is stale because of the lapse in time. The district court is given wide-latitude evidentiary rulings and will be reviewed for an abuse of discretion and a showing of prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-47 (Minn. 1997).

At oral argument, counsel disputed the district court's findings, arguing that they reflect deficiencies that appellant had corrected long before this case opened and any evidence pertaining to the child-protection case regarding T.M. is irrelevant. Generally, the rules of evidence apply in juvenile protection proceedings. Minn. R. Juv. Prot. P. 302, subd. 1. Under those rules, 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 in issue." *Boland v. Morrill*, 270 Minn. 86, 99, 132 N.W.2d 711, 719 (1965). Otherwise

admissible evidence may be excluded when the danger of unfair prejudice substantially outweighs its probative value. Minn. R. Evid. 403.

Appellant's principal argument is that, although there were parental deficiencies in the past, she has worked hard to modify her behavior and that the conditions that prevented her from successfully parenting in the past have been remedied. Thus, the conditions that prevented her from successful parenting in the past are irrelevant to this determination, and the district court should have only considered evidence directly related to appellant's parenting abilities concerning A.E. The testimony and exhibits appellant has objected to pertain to her prior relationships with R.C. and V.E., her prior child-protection case ending in a voluntary consent for adoption, and her ability to parent a child. The history of appellant's previous child-protection case is directly relevant to the court's determination of whether appellant had modified her behavior. Her first child suffered maltreatment while in her care, and it was necessary for the district court to determine if appellant's behavior had changed sufficiently to enable her to safely parent A.E. Evidence dating back to 2001 was not stale in 2008, particularly when it showed continuing patterns of behavior, more fully described below, that are likely to continue for an indeterminate period and which demonstrate the projected permanency of the parent's inability to care for the child. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (considering father's history of mental illness and inability to care for himself in terminating rights).

Appellant's parenting behavior in her previous child-protection case was relevant to the district court's determination of her future ability to parent A.E., and the district

court did not abuse its discretion in receiving and relying upon evidence of appellant's past parental conduct and ability.

Palpable Unfitness

We note initially that, after a review of the record, we do not find clear and convincing evidence for the district court's finding that appellant substantially, continually, and repeatedly neglected to comply with the duties imposed upon her by the parent and child relationship. However, we affirm because the record reveals clear and convincing evidence in support of the district court's findings on the remaining statutory grounds for termination. *See L.A.F.*, 554 N.W.2d at 396-97 (stating that the court need find only one statutory ground to support termination, if termination is in a child's best interests).

Appellant contends that there was insufficient evidence to support termination under Minn. Stat. § 260C.301, subd. 1(b)(4) (2008), which provides for termination if a parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

While the district court may not terminate parental rights solely on a parent's past behavior, it may consider a parent's pattern of conduct or conditions existing at the time of the hearing. *S.Z.*, 547 N.W.2d at 894.

The record demonstrates that appellant's consistent pattern of conduct renders her palpably unfit to independently and safely parent A.E. During two years of observation, appellant repeatedly engaged in unhealthy relationships that affected her ability to parent. Vnuk testified that appellant was involved in unstable relationships with R.C. and V.E., the respective fathers of her two children. While dating R.C., appellant told Vnuk that R.C. hit her and forced her to have sex when he was drunk. Vnuk explained to appellant that her relationship with R.C. jeopardized her ability to reunite with T.M., but appellant did not want to leave R.C. because "she didn't like to be alone." While dating V.E., Vnuk witnessed V.E. make degrading comments to appellant. On one occasion, V.E. said, "[appellant] was dumber than a box of rocks."

Dr. Schur testified that appellant's cognitive disabilities negatively affect her choice of adult partners, stating, "She will pick men that pick her." McNally also testified that appellant "engages [in] . . . relationships with people who are not helpful for her in parenting."

Appellant has also shown a repeated failure to read her baby's cues. McNally testified about child-protection services' initial involvement with T.M. and that, despite being given specific instructions about feeding T.M., appellant was not "able to get her child [] to eat the food necessary in order for appropriate development. She's not able to read her child['s] cues." This report also stated that "the child would probably not survive if [appellant] were ever to move out on her own with her daughter." Similarly, nursery progress notes regarding observations of appellant and A.E. said, "Mom appears to be quite low functioning and does not necessarily read baby's cues appropriately." For

example, while still at the hospital following A.E.'s birth, medical personnel had to remind appellant to feed A.E. every three hours, even if it sometimes meant she would have to wake the baby from a nap. Additionally, appellant told medical personnel that she planned to sleep with A.E. in her bed, and they had to explain to appellant the importance of a baby having his own bed.

A parent's rights cannot be terminated solely because of his or her mental retardation or illness. *In re Welfare of J.J.B.*, 390 N.W.2d 274, 281 (Minn. 1986). If, however, the mental illness or other mental or emotional disability precludes the parent from providing proper parental care, the statutory requirement for termination is met. *Id.* Dr. Schur testified that her 2006 evaluation of appellant continues to be relevant because "cognitive function does not change that dramatically unless there were chemical dependency issues or psychosis . . . so her level of cognitive functioning would remain as an adult the same today as it was two years ago." Dr. Schur testified that "mild range of mental deficiency" regarding one's ability to parent means that the adult has difficulty being able to anticipate the needs of a dependent person or child. She opined that appellant "definitely wanted to learn how to parent . . . wanted to be a good parent. She just didn't understand the questions that were asked of her."

Appellant argues that her cognitive disability can be overcome and that she has shown improvement through her compliance with the current case plan. Even if a parent has made recent attempts to develop the ability to assume parental responsibilities and has a sincere desire to do so, the court is not compelled to find that the parent is able to assume parental responsibility. *In re Welfare of J.L.L.*, 396 N.W.2d 647, 652 (Minn.

App. 1986). The County conceded that appellant was cooperative and was generally compliant with appointments and other expectations. However, as the district court found, appellant simply could not be a competent parent for A.E. And, as Dr. Schur noted, "you cannot learn abstract reasoning. It's neurological."

The record shows that A.E.'s involvement in unstable relationships and her inability to bond with her child constitute "specific conditions directly relating to the parent and child relationship" that are of a "duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." Minn. Stat. § 260C.301, subd. 1(b)(4). Thus, the district court's findings concerning palpable unfitness are not clearly erroneous and are supported by clear and convincing evidence.

Failure to Correct Conditions Leading to Placement

A district court may terminate a person's parental rights to a child upon a finding that, after the child's placement out of the home, the parent's reasonable efforts "failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5) (2008). Here, appellant argues that, because she complied with her case plan, the evidence is insufficient to show that she failed to correct the conditions leading to A.E.'s out-of-home placement. Subdivision (iii) of this provision states that

> conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to a child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan.

Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). Appellant's contention that she complied with her case plan is relevant to the presumption in subdivision (iii). The conditions leading to A.E.'s placement that were within appellant's control were her relationships with men, location of stable housing, and financial responsibility. The evidence shows that those conditions were part of appellant's case plan and that she failed to comply with them. Thus, applying the presumption in the statute, appellant has not corrected the conditions leading to A.E.'s placement.

Vnuk testified that she made significant efforts to assist appellant in her daily living but that appellant's cognitive disability would not allow her to learn and retain the requisite skills. For example, appellant relied on Vnuk for rides because she was unable to learn the bus routes on her own. Appellant mismanaged her money and was unable to pay bills. Vnuk testified about an incident when appellant continued to pay a bill for a service that she was not even receiving because she did not understand the billing. Vnuk set up a representative payee service for appellant that she later canceled because V.E. told her to. During one year, appellant received a tax rebate in excess of $1,000, which she agreed to let Vnuk help her put into her savings account. Vnuk later learned that appellant had spent all the money on clothes and a "gaming trip" for her and V.E.

As part of her case plan, appellant was to follow the recommendations of the "parent workers." Vnuk testified that, when appellant was with V.E., "her attitude began to change, and she would not show up for appointments." She recommended that appellant stop dating V.E. However, appellant was still involved in a sexual relationship with V.E. when Vnuk's services were requested for the second time.

Significant efforts were made to secure supportive housing for appellant in accordance with her case plan. One of PSP's main reasons for denying appellant assistance a second time was her inability to secure supportive living because "without supports, [PSP] believed [appellant] would not be able to do parenting safely and independently in the home." Appellant was denied supportive living at "Oakwood," a more restrictive service providing around-the-clock onsite staff, because "[s]he would not benefit from the program because she wouldn't be able to keep up or understand what was going on, and that her needs were too high." She was also denied services from "Portland Village," a semi-supportive living service provider. During trial, on a day when the district court was not in session, McNally explored another supportive housing option at the Hammer Residence and discovered that it only accepted adults into its program. McNally testified that even if there were supportive housing available, appellant indicated that she did not want to move from her current housing but, instead, wished to parent A.E. at her apartment.

The district court concluded that appellant's "cognitive disabilities limit her ability to do routine everyday tasks such as learning bus routes or managing money. These limitations also limit her ability to form a parental bond with her children." Although several witnesses testified that appellant had complied with her case plan to the best of her ability, the record shows that she simply was unable to successfully complete all the critical components of the plan. Dr. Schur testified that, although appellant tried hard, her cognitive disability limits her ability to learn the proper parenting skills. It was Vnuk's position that appellant did not "understand the expectations and the development

of the age of her child . . . and supervision." Appellant's willingness to cooperate is not tantamount to a finding that a parent has substantially complied with its orders and a reasonable case plan.

Reasonable Efforts by the County

Appellant also argues that the district court erred in terminating her parental rights because reasonable efforts by the County failed to correct the conditions that caused A.E.'s out-of-home placement. In every termination action, the district court must make specific findings that

> (1) . . . reasonable efforts to prevent the placement and to reunify the child and the parent were made including 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; or
>
> (2) . . . reasonable efforts at reunification are not required as provided under section 260.012.

Minn. Stat. § 260C.301, subd. 8 (2008). A district court's finding of reasonable efforts will be affirmed if it is supported by clear and convincing evidence. *See In re Children of T.A.A.*, 702 N.W.2d 703, 710-11 (Minn. 2005).

Appellant argues that the case plan was not reasonable because the requirement that she secure supportive housing was not feasible. She contends that the unreasonableness of her case plan is shown by the County's several failed attempts to qualify her for supportive housing. Appellant contends that such services do not even exist for an adult in her circumstances. Although the record supports appellant's argument as to the unavailability of services, there is also evidence that, even if the

County had found appropriate housing, appellant was not willing to move from her apartment. Moreover, the statute requires only "reasonable efforts," and the record shows that the County satisfied that requirement. The County proposed three different housing programs, but appellant did not qualify for any, for reasons outside the County's control. Indeed, on one occasion, appellant was offered an opportunity to relocate to Indiana with A.E. to live with family. But appellant did not want to go with them and, instead, chose to live independently in her own apartment. The district court concluded that "[t]here are no new options for supportive housing at the level [appellant] would need to raise a child."

Additionally, the County sought PSP services, and, when PSP refused to reopen appellant's case, the County went elsewhere to obtain similar services and referred her to Reuben Lindh. The County also provided appellant with supervised visits with A.E. Nevertheless, as the district court found, appellant's cognitive disabilities prevented any of the offered services from adequately addressing and correcting the fact that appellant is unable to safely and effectively parent A.E.

The record supports the district court's conclusion that the County exhausted the supportive housing options for appellant. As discussed above, the County researched three different housing options, but appellant qualified for none of them. The court's finding that reasonable efforts were made by the County is supported by the long list of services provided within a reasonable case plan, and appellant's contention to the contrary is without merit.

Appellant also urges that her participation in the case plan, though not perfect, was sufficient. She claims that she made extensive efforts to cooperate with the County and participate in rehabilitative measures and was largely successful in doing so. While appellant achieved some success in meeting the objectives of the case plan, the record establishes that she was unprepared to parent A.E. at the time of trial because of her cognitive disabilities and inability to provide a safe environment for A.E. The evidence is sufficient to show that reasonable efforts "failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5).

Best Interests

Appellant does not argue that the district court made insufficient best-interest findings, but rather argues that she loves her son, an undisputed fact. At oral argument before this court, however, appellant contended that it is not in A.E.'s best interests that her parental rights be terminated. "The 'paramount consideration' in termination of parental rights proceedings is "the best interests of the child." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008) (quoting Minn. Stat. § 260C.301, subd. 7 (2006)). Consideration of the best interests of the child is a necessary condition, but not a sufficient condition, for the termination of parental rights. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 664 n.6 (Minn. 2008) (citing *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54-55 (Minn. 2004)).

The district court found that placing A.E. in appellant's care would be placing him in danger. The district court also found that A.E. is "thriving" in foster care. In contrast, the district court found that appellant's cognitive disability limited her ability to bond

with A.E. The district court's findings are supported by ample evidence in the record. Dr. Schur testified that "if a situation arose where she had to think on her feet, it would be extremely difficult for [appellant], and she would do what she knew how to do to the best of her ability, which might not be in the child's best interest." McIntyre observed A.E. on a regular basis after his placement in foster care. He testified that A.E. is "a very healthy child" and did not seem to have any special needs.

Based on a review of the record, the district court made the appropriate findings concerning the child's best interests. Thus, the district court's conclusion that termination of appellant's parental rights is in A.E.'s best interests is supported by substantial evidence.

Affirmed.