STATE OF MINNESOTA
IN COURT OF APPEALS
A09-483

In the Matter of the Welfare of the Children of:
M. M. M. and M. J., Parents.

Filed October 27, 2009
Affirmed
Ross, Judge

Olmsted County District Court
55-JV-08-6820

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Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Ross, Judge.

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

ROSS, Judge

Appellant mother M.M.M. challenges the district court's order terminating her parental rights to her six-year-old daughter. M.M.M. argues that substantial evidence does not support the district court's findings that she failed to comply with the duties imposed by the parent-child relationship, that she was palpably unfit to be a parent, and

that she failed to correct the conditions leading to the child's out-of-home placement. This appeal requires us to decide whether the district court addressed the statutory criteria and whether clear and convincing evidence supports the district court's order terminating M.M.M.'s parental rights. Because the record supports the district court's finding that M.M.M. failed to correct the conditions leading to the child's out-of-home placement, we affirm.

FACTS

The district court terminated M.M.M.'s parental rights to her six-year-old daughter, S.J., after a trial in November 2008. Our focus is whether substantial evidence supported the district court's termination of M.M.M.'s parental rights under Minnesota Statutes section 260C.301, subdivision 1(b)(2), (4), or (5) (2008).

M.M.M. is the mother of S.J. and sixteen-year-old son T.M. T.M. and S.J. have different fathers. M.M.M. voluntarily terminated her parental rights to T.M. in 2008, and T.M. is not the subject of this appeal. S.J.'s father, M.J., voluntarily terminated his parental rights to S.J. in 2008.

M.M.M. and M.J. met in September 2001 in an internet chat room. One month later, M.M.M. traveled from Illinois to Minnesota to visit M.J. M.J. soon moved to Illinois to live with M.M.M. and then eight-year-old T.M. M.J. began abusing M.M.M. within six months and M.M.M. returned the violence; she once broke her hand hitting him. M.J. drank alcohol daily and, although he was mostly unemployed, controlled the couple's money.

The couple moved to Rochester in 2004. They did not arrange for employment or housing beforehand. Beginning in October 2004, Olmsted County Community Services (OCCS) responded to reports about T.M., including reports of domestic abuse. Between October 2004 and January 2007, OCCS received fourteen reports of domestic abuse, including incidents that occurred in S.J.'s presence. The reports included verbal and physical fights between M.J. and M.M.M. and between M.J. and T.M. One report indicated that the children were left in the car when the outside temperature was nearly 100 degrees.

An incident reported on February 1, 2007, led police to remove T.M. from the home. M.J. and T.M. had physically fought in their apartment, and at 12:30 a.m. T.M. was locked out of the home for half an hour in below-freezing temperatures before M.J. let him in. OCCS filed a petition for an order for protection or services for both children. In April 2007, M.M.M. and M.J. agreed to a detailed child-protection services plan identifying the family's needs, goals, and tasks required to meet the needs. The family's needs included both parents' obtaining full-time employment and managing a budget, developing parenting skills, and addressing M.J.'s alcohol use. In May 2007, the district court ordered all parties to comply with the case plan after the parents admitted, and the district court found, that S.J. was a child in need of protection or services. M.M.M. admitted that the home environment was dangerous to S.J. because of the child's exposure to domestic violence. To meet the goals of protecting the children from harm and safely maintaining a home, both parents were to address mental-health issues and complete a comprehensive parenting assessment with Dr. Marcia Guertin.

Dr. Guertin evaluated M.M.M. Dr. Guertin opined that M.M.M could not place the needs of her children before her own needs and that domestic violence had already inhibited the children's development.

In November 2007, the family was evicted from their apartment for nonpayment of rent. M.M.M. and M.J. separated after the eviction. M.M.M. and S.J. moved into an apartment with M.M.M.'s co-worker. On November 20, 2007, the court removed S.J. from M.M.M. and M.J.'s care and placed her in foster care with the family that was caring for T.M.

Sometime during the fall of 2007, M.M.M. began a relationship with a different co-worker, J.T. The record includes little information about the nature of the relationship, but it appears that J.T. slept and showered at M.M.M.'s apartment occasionally and spent time with M.M.M.'s children. When M.M.M. introduced J.T. to her son, she did not know his last name, but she did know that he had a criminal history that included theft and illegal drug use. OCCS and the guardian ad litem did not learn of J.T. until January 2008, after he left Minnesota for North Carolina. M.M.M. maintained contact with J.T. while he was serving a jail sentence in North Carolina. When J.T. returned to Minnesota, M.M.M. allowed him to stay at her apartment occasionally and to have contact with the children. The OCCS case manager and S.J.'s guardian ad litem expressed concern to M.M.M. about J.T.'s involvement with the children after investigating his background. The guardian ad litem was concerned about M.M.M.'s failure to protect S.J. because J.T. had a criminal history, was unemployed, and was "essentially homeless."

In July 2008, OCCS filed a petition seeking to terminate M.M.M. and M.J.'s parental rights to S.J. At the consequent trial, M.M.M. testified that she is not in a romantic or sexual relationship with J.T., that they do not live together, and that she was never told that maintaining her relationship with J.T. could impact her parental rights. M.M.M. also testified that she would end her relationship with J.T. if that was required to get her daughter back. But the district court found that the OCCS case manager repeatedly expressed her concerns to M.M.M. that J.T.'s involvement could jeopardize M.M.M.'s reunification with the children. The district court heard testimony that M.M.M. continued her relationship with J.T. and often brought him along on her visits with the children.

The district court found that clear and convincing evidence supports terminating M.M.M.'s parental rights to S.J. under Minnesota Statutes section 260C.301, subdivision 1(b)(2) (neglect of parental duties), (4) (palpable unfitness), and (5) (failure of reasonable efforts). The district court also found that the termination of M.M.M.'s parental rights was in S.J.'s best interest and necessary for her to achieve a consistent, safe, and stable home life. M.M.M.'s appeal follows.

D E C I S I O N

M.M.M. challenges the district court's decision to terminate her parental rights. A district court may terminate parental rights if at least one statutory ground for termination is supported by clear and convincing evidence and if termination is in the child's best interest. 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); *see also* Minn. Stat. § 260C.301, subd. 1(b) (2008) (listing

grounds for involuntarily terminating parental rights). This court reviews a district court's decision to terminate parental rights for whether the district court addressed the statutory criteria and for whether its factual findings are supported by substantial evidence and are not clearly erroneous. *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. App. 1996). We give considerable deference to the district court's decision to terminate parental rights, but we closely inquire into the sufficiency of the evidence to ensure that it is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The district court's decision to terminate must be based on evidence that relates to "conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001).

If a single statutory basis for terminating parental rights is supported by clear and convincing evidence, this court need not address any other statutory bases the district court may have found to exist. *See In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005) (declining to review remaining grounds after affirming on one statutory ground). We have carefully considered M.M.M.'s challenge and hold that the district court had a sufficient legal and factual basis to terminate M.M.M.'s parental rights after finding that reasonable efforts by OCCS failed to correct conditions leading to S.J.'s out-of-home placement.

We first determine whether the district court considered the statutory criteria. Under subdivision 1(b)(5),

> [i]t is presumed that reasonable efforts under this clause have failed upon a showing that:
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> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months [within the preceding 22 months] unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan required under section 260C.212 and filed with the court under section 260C.178;
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> (iii) 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; and
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> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5).

The district court found that S.J., who was under the age of eight years at the time the child-protection petition was filed, had resided out of the parental home under court order for more than six months. Additionally, the district court found that although M.M.M. maintained contact with the child, she had not been complying with the out-of-home placement plan. The court next found that the out-of-home placement plan had

been approved under section 260C.212 and filed under section 260C.178. And the district court presumed that the conditions leading to the out-of-home placement had not been corrected because M.M.M. had not substantially complied with the court orders and the case plan. Finally, the district court found that OCCS had made reasonable efforts to rehabilitate M.M.M. and to reunite the family. These findings addressed the statutory criteria for terminating M.M.M.'s parental rights.

We next consider whether the district court's findings are supported by substantial evidence. M.M.M. does not challenge the district court's findings that the court approved a placement plan or that OCCS made reasonable efforts to rehabilitate M.M.M. and reunite the family. Based on the statutory presumption, we conclude that there is substantial evidence to support the district court's finding that reasonable efforts failed to correct the conditions leading to S.J.'s placement because M.M.M. failed to comply with the terms of her case plan. The finding is therefore not clearly erroneous.

At the time of the termination trial, S.J. was five years old and had spent the previous year in foster care under court order. M.M.M.'s case plan had been in effect for a year and a half. OCCS had waited until July 2008, which was more than one year after M.M.M. agreed to the case plan, to file a petition seeking termination of her parental rights. OCCS filed the petition based on M.M.M.'s failure to make progress on the case plan and the length of time that S.J. had remained out of the home. According to the OCCS case worker, M.M.M. had completed only 50 percent of the case plan. The case worker testified that M.M.M. was uncooperative and failed to meaningfully communicate with OCCS.

The district court found that while S.J. was in foster care, M.M.M. became habitually and chronically late for visits and also missed visits. The district court heard evidence that M.M.M. arrived late 80 percent of the time. And it noted that her absences increased as the trial drew closer. In the three months before trial, M.M.M. missed four visits. The emotional impact of M.M.M.'s approach to these visits can be inferred from the record. For example, on one occasion, during S.J.'s "special week" at school, M.M.M. was scheduled to attend and share stories about S.J. with the class, as other parents did for their children. But M.M.M. failed to arrive until her time to present was almost over. On another occasion, M.M.M. was 45 minutes late to a supervised visit because, according to her, she decided to return home to get a camera containing pictures to show S.J.

Other concerns included M.M.M.'s bringing J.T. on visits with S.J. even after the case worker warned her three times that J.T.'s involvement might jeopardize M.M.M.'s chances to reunite with her. Although M.M.M. contends on appeal that she was not told that maintaining a relationship with J.T. would jeopardize her chances to be reunited with S.J., the district court accepted the case worker's testimony and we defer to this credibility determination. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) ("[A] district court is in a superior position to assess the credibility of witnesses."). The guardian ad litem's and case worker's concern about J.T. was reasonable. Whether or not J.T. was an actual danger, M.M.M.'s apparent failure to exercise vigilance in the face of J.T.'s social and criminal instability demonstrates a lack of attention to S.J.'s needs. In August 2008, OCCS began supervising all of M.M.M.'s visits with S.J.

because of M.M.M.'s continued involvement with J.T. and concerns for the child's safety and wellbeing.

M.M.M. did participate in a parenting evaluation with Dr. Guertin as required by the case plan. But she did not follow through with the evaluation's recommendations, which was also required by the case plan. The court found that because M.M.M. had not followed Dr. Guertin's recommendations, she had not made significant progress addressing her own emotional and mental-health issues.

From September through November 2007, M.M.M. participated in group therapy at the Empowering Women's Group, but she did not follow through with the individual therapy designed for her. M.M.M. began individual therapy in September 2007, attended two sessions the following month, and then did not return for seven months. M.M.M. returned for two therapy sessions in May 2008, one month before the trial that had been scheduled to resolve her parental rights to T.M. We infer that the district court suspected that M.M.M. attended these two sessions only to make a good impression for the trial; after she voluntarily terminated her parental rights to T.M., M.M.M. did not resume this therapy.

M.M.M. began therapy in April 2008 with Dr. Mark White at the Family Centre clinic, but the district court found that this therapy did not comply with the case plan because it was not directed to the issues identified in Dr. Guertin's parenting evaluation. The district court commended M.M.M. for trying to improve her relationship with her children, but the court also found that she was deceitful with Dr. White and did not provide him with pertinent information. The district court observed that M.M.M. did not

begin this therapy until after OCCS filed the petition to terminate her parental rights to T.M. and that she missed approximately 25 percent of her appointments.

Finally, the district court noted the case worker's and guardian ad litem's concerns about M.M.M.'s financial mismanagement and her inability to provide for S.J. M.M.M.'s finances had been a focus of OCCS since 2004, and planning a budget was one of M.M.M.'s primary goals. But M.M.M. did not provide a budget until the day of the termination trial, and the district court found the effort inadequate. The budget gave little or no consideration to S.J.'s needs, including her food, clothing, daycare, and school.

The district court found that while there was some evidence that M.M.M. had made progress by providing shelter and financial support for herself, she had not made significant progress on the identified child-protection concerns and was unable to rebut the statutory presumption that reasonable efforts had failed.

Because clear and convincing evidence established that reasonable efforts had failed to correct the conditions leading to S.J.'s placement out of the home, the district court appropriately terminated M.M.M.'s parental rights. And because this statutory basis is sufficient to terminate M.M.M.'s parental rights, we need not address the additional two statutory bases that the district court relied on.

Affirmed.