STATE OF MINNESOTA
IN COURT OF APPEALS
A09-779

In the Matter of the Welfare of
the Children of: J. B. and R. J. G., Parents.

Filed October 27, 2009
Affirmed
Hudson, Judge

Itasca County District Court
File No. 31-JV-08-1551

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Considered and decided by Hudson, 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

HUDSON, Judge

Appellant-mother J.B. challenges a district court order transferring permanent custody of her children, R.J.G. and N.L.G., to their maternal aunt under Minn. Stat. § 260C.201, subd. 11 (2008). Because the district court's findings address the required statutory criteria, including relevant best-interests factors; are supported by substantial evidence and are not clearly erroneous; and because the district court did not abuse its

discretion by admitting into evidence criminal complaints filed against mother, we affirm.

FACTS

In December 2007, Itasca County Health and Human Services offered appellant voluntary services, based on concerns with appellant's chronic use or abuse of alcohol; her parenting of her children, eight-year-old N.L.G. and fourteen-year-old R.J.G.; and her relationships with men in the home, which could be harmful to the children. Appellant acknowledged these concerns, but she was unable to successfully use the services offered.

In May 2008, the county filed a petition alleging that appellant's children were in need of protection or services, based on reports that appellant had left N.L.G. unsupervised in the home; that appellant could not be located when R.J.G. was detained for stealing a vehicle; and that appellant was severely and chronically using alcohol in her home. Appellant admitted the allegations, and the district court adjudicated the children in need of protection or services under Minn. Stat. § 260C.007, subd. 6 (2008). The court ordered an out-of-home placement with the children's maternal aunt.

Appellant signed an out-of-home placement plan for reunification. The plan required appellant to abstain from chemical use, successfully complete chemical-dependency treatment, attend individual counseling, comply with recommendations for attending parenting-classes or meeting with an in-home worker, not allow R.J.G. to spend time with unhealthy or unsafe individuals, and not leave her children alone for any period of time without proper child care.

Appellant began inpatient treatment at Northland Recovery Center in May 2008, but left two days later against staff advice. She attended outpatient treatment at Northland from June through September 2008, but she was discharged and recommended for inpatient treatment after about four treatment lapses. In August 2008, appellant had a psychological assessment, which showed diagnoses of anxiety disorder; alcohol and nicotine dependence; and a provisional diagnosis of dependent personality disorder, with symptoms of inattentiveness and possible mild cognitive impairment. Appellant did not follow through with appointments to review her psychological-test results.

Appellant had a second chemical-dependency evaluation in October 2008 and entered Range Treatment Center. She was discharged from that program at staff request after 12 days with a poor prognosis based on her lack of involvement and inability to comply with program expectations. Staff noted her negative attitude, inconsistent behaviors relating to a willingness to change, passive-aggressive communication, anxiety, and a lack of understanding of her addiction and relapse history. During this period, appellant continued a personal relationship with a registered sex offender, which she agreed was an unhealthy relationship for her.

In October 2008, the county filed a petition seeking a permanent transfer of physical and legal custody of the children to their maternal aunt under Minn. Stat. § 260.201, subd. 11 (2008). Appellant began outpatient treatment at Rapids Counseling in December 2008 and was still participating in that program when the district court held its evidentiary hearing on the petition in February 2009.

At the February hearing, appellant's drug counselor from Northland Recovery testified that he believed the center had "exhausted every opportunity to help" appellant with her chemical-dependency issue. Appellant's drug and alcohol counselor from Rapids Counseling testified that appellant gained "a little bit" of insight into those issues during her treatment at that facility, but that she still had a long way to go to address them and had not shown a willingness to do what was needed to complete treatment.

The county child-protection social worker testified that when appellant had unsupervised visitation with the children for two weeks in August 2008, appellant tested positive for alcohol and propoxyphene, was discharged from treatment, and had inappropriate friends of R.J.G.'s over during the visits. There were also reports that during supervised visits, appellant had been drinking or using her cell phone to talk about inappropriate matters. The social worker noted her concern about appellant's continuing relationship with a convicted sex offender, whose probation conditions prohibited unsupervised contact with females under 18. That man had contact with appellant's daughter, N.L.G., by bringing cupcakes to N.L.G.'s school and attempted contact with R.J.G. when appellant requested that R.J.G. be allowed to have lunch with her and the man.

The social worker testified that although appellant loved the children and they loved her, there had been a history of domestic violence, chemical use, unhealthy relationships, and the children's needs not being met while in appellant's care. She testified that the children had a significant history and good relationships with their aunt, who had been able to provide structure and stability for them, including enforcing rules,

getting them counseling, and improving their school attendance. She also testified that she felt it was in the children's best interests to transfer permanent custody to their aunt and that it would have a negative impact on the children to allow appellant additional time to attempt reunification.

The guardian ad litem testified as to his opinion that it would be in the children's best interest to transfer permanent legal and physical custody because appellant had not complied with the case plan because she had relapsed several times, was apparently not law abiding, and was not able to take care of the children financially or meet their other needs.

Appellant testified that she loved her children, was very attached to them, and believed they were very attached to her. She testified that she had been in recovery for over three months and had mental health issues which interfered with her progress in treatment. She acknowledged that she had a continuing personal relationship with a registered sex offender, which she agreed was unhealthy for her and the children, but was willing to give it up to have contact with the children. She testified that she was on new medication and thought she could be successful in completing the case-plan requirements if she were given three more months to do so.

Appellant's attorney called six additional personal witnesses who testified in support of appellant's ability to parent the children. The children's father, who did not have custody of the children, testified that he would support a three-month extension for appellant to work on her sobriety, but acknowledged that their aunt would be an appropriate person to receive custody if the court were to order a permanent transfer.

The county also offered as evidence three criminal complaints: two Itasca County complaints charging appellant with gross-misdemeanor offenses of contributing to the need for child protection or services, and one St. Louis County complaint charging appellant with a gross-misdemeanor offense of third-degree test refusal and misdemeanor offenses of fourth-degree DWI and obstructing legal process. Appellant objected to these complaints as hearsay, and the district court received them for the purpose of establishing probable cause to charge appellant with the offenses and to provide "background and context" for the proceedings.

The district court issued its findings of fact, conclusions of law, and order. The district court determined that there was clear and convincing evidence that the conditions leading to the out-of-home placement had not been corrected and it was in the children's best interests to transfer permanent legal and physical custody to their aunt. The district court ordered the transfer of custody, granting appellant and the children's father reasonable and liberal parenting time, at the discretion of the custodian, consistent with the children's best interests. The district court denied appellant's motion for a new trial, and this appeal follows.

D E C I S I O N

The allegations of a permanency petition must be proved by clear and convincing evidence. *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996); *see also* Minn. R. Juv. Prot. P. 39.04, subd. 1 (requiring that statutory grounds set forth in petition be proved by clear and convincing evidence). When reviewing a permanent-placement order, this court determines whether the district court's permanency "findings address the

statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d at 261 (quotation omitted).

I

An order permanently placing a child outside the home of a parent or guardian must address: (1) how the placement serves the child's best interests; (2) the extent and nature of the responsible social service agency's reasonable reunification efforts; (3) the ability and efforts of the parent or parents to use services to correct the conditions leading to the out-of-home placement; and (4) whether the conditions leading to the placement have been corrected so that the child can safely return home. Minn. Stat. § 260C.201, subd. 11(i) (2008). When a district court grants custody of a child to a relative, the order must also address the suitability of the prospective custodian. *Id.*, subd. 11(d)(1)(i). In a permanency proceeding, the "'best interests of the child' means all relevant factors to be considered and evaluated." *Id.*, subd. 11(c)(2).

Appellant does not challenge the district court's determinations that the county made all reasonable efforts to reunify appellant with the children and that mother had been unable to use the services provided to comply with her case plan. Rather, appellant argues that the district court erred by failing to apply a best-interests standard that balances the interest of the child in preserving the parent-child relationship; the interest of the parent in preserving the parent-child relationship; and the competing interests of the child, such as the child's interest in a stable environment. *See In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992) (requiring such an analysis). Appellant argues that a remand is necessary for the court to apply the best-interests-standard articulated in *R.T.B.*

But *R.T.B.*, which addressed a termination of parental rights, focuses on whether to preserve or terminate the parent-child relationship. *Id.* at 3-4. In a transfer-of-legal-custody proceeding, however, the district court may both transfer legal custody of a child and preserve a continuing relationship between the parent and child by allowing the parent continued contact with the child. *See In re Welfare of A.R.G.-B.*, 551 N.W.2d at 264 (noting difference between termination proceedings and grant of custody). Here, the district court granted both parents "reasonable and liberal parenting time," at the discretion of their custodian and consistent with the children's best interests, acknowledging that "both [Appellant] and Father . . . are still important players in the lives of these two children." The termination-centered analysis of *R.T.B.* does not apply to this transfer-of-legal-custody proceeding, and the district court did not err by failing to use it.

Appellant also argues that the district court erred by failing to make sufficient written findings on the children's best interests to permit appellate review. To be sufficient for appellate review, a court's best-interests findings must provide insight into the facts and opinions most persuasive of the court's decision or show the court's comprehensive consideration of relevant statutory criteria. *In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990).

An order permanently placing a child outside of the parent's home requires "detailed findings" on "how the child's best interests are served by the order." Minn.

Stat. § 260C.201, subd. 11(i).[1] Appellant acknowledges that the district court made sufficient findings on how the best interests of the children are served by placement with their aunt, but asserts that the court made insufficient findings on how continued placement away from appellant's home serves their best interests.

The district court found that appellant failed to complete primary chemical-dependency treatment or to make meaningful progress in any of four treatment programs she attended over a nine-month period. A finding relating to a parent's inability to demonstrate sobriety does not act as a sufficient finding that a child's best interest is served by a permanent out-of-home placement, absent a causal connection between that use and the parent's inability to care for the child. *In Re Welfare of Children of T.R.*, 750 N.W.2d 656, 662–63 (Minn. 2008). But here, the district court found that during a two-week period of unsupervised visitation in August 2008, appellant tested positive for alcohol and allowed inappropriate friends of R.J.G.'s to be present at the home during a visit. The district court also found that appellant would call the children after she had been drinking alcohol and have phone conversations within their hearing that were inappropriate for them to hear. And the district court found that appellant was currently in a relationship with a registered sex offender who had contact with the children, and she refused to terminate that relationship, despite being advised that it is in her best interest

[1] Appellant cites Minn. Stat. § 260C.201, subd. 2 (2008), which requires written findings on the best interests of the child and discussion of alternative dispositions considered. But Minn. Stat. § 260C.201, subd. 2, refers to written findings supporting a "disposition and case plan," which occurs in an initial or continuing child protective-services order, not to findings in an order conferring legal custody in a permanency proceeding. In this permanency proceeding, the court issued its order under Minn. Stat. § 260C.201, subd. 11.

and that of the children to do so. Because the district court's findings are supported by the record, this court may infer that they support the district court's determination that it would not be in the children's best interest to return them to appellant's custody. *See In re A.R.G.-B.*, 551 N.W.2d at 261 (on appeal, evidence and reasonable inferences viewed in the light most favorable to the prevailing party).

Appellant also argues that the district court erred by declining to apply the best-interests factors listed in Minn. Stat. § 518.17 (2008), which governs best-interests determinations in family-court custody matters. The district court stated that it "did not address each of the best interest factors of Minn. Stat. § 518.17 because to do so would be to begin with a flawed premise: that [appellant] is capable of properly parenting the children." A former version of the permanency statute required the court to "follow the standards and procedures applicable under this chapter, chapter 260, or chapter 518." Minn. Stat. § 260C.201, subd. 11(e)(1)(2000). Removal of the specific language relating to chapter 518 means that the district court must continue to consider the best interests of the child, but need no longer make findings specifically addressing the factors listed in Minn. Stat. § 518.17. *See* Minn. Stat. § 260C.201, subd. 11(e) (2008). Therefore, we conclude that the district court's findings sufficiently address the best interests of the children, are supported by substantial evidence, and are not clearly erroneous.

II

Finally, appellant argues that the district court abused its discretion by admitting into evidence three criminal complaints filed against appellant. She argues that they were inadmissible hearsay. This court will not disturb a district court's evidentiary ruling

unless the district court has erroneously interpreted the law or abused its discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997). An appellate court will grant a new trial because of improper evidentiary rulings only if a party demonstrates prejudicial error. *Id*. at 46.

The Minnesota Rules of Evidence provide that an out-of-court statement offered in evidence to prove the truth of the matter asserted is hearsay and is inadmissible unless an exception to the hearsay rule applies. Minn. R. Evid. 801, 802. Two of the complaints charge appellant with gross-misdemeanor offenses of contributing to the need for child protection or services. The third complaint charges appellant with the gross-misdemeanor offense of third-degree test refusal and misdemeanor offenses of fourth-degree DWI and obstructing legal process. The district court stated that it admitted the complaints to show that a probable-cause determination had been made and to show "background and context," including the county's response to the child-protection allegations, the actions of appellant in possibly misleading the county about the DWI arrest, and the fact that appellant had criminal charges pending in two counties.

To the extent the district court considered the complaints to show probable-cause determinations, the complaints are not hearsay because they were not offered to prove the truth of the matter asserted. *See, e.g.*, *Woods v. City of Chicago*, 234 F.3d 979, 986–87 (7th Cir. 2000) (concluding that district court properly admitted criminal complaints in civil action for limited purpose of showing that police had probable cause to arrest plaintiff, because existence of probable cause does not depend on actual truth of complaints). Even if the complaints were considered hearsay, records prepared by public

offices and agencies are admissible as exceptions to the hearsay rule unless facts or circumstances indicate a lack of trustworthiness. Minn. R. Evid. 803(8)(A). The complaints, which were prepared by the public offices of the county attorney in Itasca and St. Louis counties, are public records setting forth the activities of those offices in charging appellant with the named offenses, and no circumstances show them to be untrustworthy.

Appellant points out that the district court also found that appellant failed to remain law-abiding, and the only alleged law violations were those charged in the complaints. But in the context of this case, any error in relying on unproven allegations in the complaints was not prejudicial and does not warrant a new trial.

Affirmed.

Judge Natalie E. Hudson