STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1196
A09-1215

In the Matter of the Welfare of the Child of: K. M. R. and B. W., Parents.

Filed December 22, 2009
Affirmed
Kalitowski, Judge

Anoka County District Court
File No. 02-JV-08-1992

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Shumaker, Judge.

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

KALITOWSKI, Judge

In this consolidated appeal, appellant-father B.W. and appellant-mother K.M.R. challenge the district court's denial of their motions to vacate the default judgment terminating their parental rights. Appellant-father argues that the district court abused its

discretion in denying his motion to vacate the default judgment because the court did not have sufficient evidence of abandonment. Appellant-mother argues that the district court had insufficient evidence to terminate her parental rights on all asserted statutory grounds. We affirm.

D E C I S I O N

On appeal, the district court's decision on a motion to vacate a default order will stand absent an abuse of discretion. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001). Minn. R. Juv. Prot. P. 46.02 provides that a court may relieve a party from a final order for reasons that include "mistake, inadvertence, surprise, or excusable neglect."

In order to obtain relief from a default judgment, the party seeking relief must demonstrate,

> (1) she has a reasonable defense on the merits of the case; (2) she has a reasonable excuse for her failure to act; (3) she acted with due diligence after the notice of entry of the default judgment; and (4) the opposing party will not be substantially prejudiced if the motion to vacate the default judgment is granted.

Coats, 633 N.W.2d at 510 (applying Minn. R. Civ. P. 60.02 because at the time, the rules of juvenile protection procedure lacked the analog to this rule currently found in Minn. R. Juv. Prot. P. 46.02). All four of these *Coats* factors must be met to entitle an appellant to relief. *Id*. But in light of the preference for deciding a case on the merits, a weak showing on one factor may be outweighed by a strong showing on the others. *Riemer v. Zahn*, 420 N.W.2d 659, 662 (Minn. App. 1988).

I.

Reasonable Defense on the Merits

To prevail on appeal, appellant-father must first demonstrate that he has a reasonable defense on the merits. This factor is satisfied by "[s]pecific information that clearly demonstrates the existence of a debatably meritorious defense." *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 403 (Minn. App. 2008) (applying Minn. R. Civ. P. 60.02), *review denied* (Minn. Apr. 29, 2008). In the context of a termination of parental rights (TPR) proceeding, an asserted defense on the merits is deficient if it is supported only by conclusory statements. *Coats*, 633 N.W.2d at 511 (rejecting mother's argument that she established a reasonable defense on the merits based on her unsupported claim of interest in her children's health and well-being).

Here, the district court found that appellant-father did not provide a reasonable defense on the merits. Appellant-father argues that he has a reasonable defense on the merits because the county cannot prove its case, there is no evidence that he abandoned his son, and the county did not make reasonable efforts to reunite them.

The district court found that there was clear and convincing evidence that appellant-father abandoned his son, under the meaning of Minn. Stat. § 260C.301, subd. 1(b)(1) (2008). A court can presume abandonment when "the parent has had no contact with the child on a regular basis and [has] not demonstrated consistent interest in the child's well-being for six months and the social services agency has made reasonable efforts to facilitate contact." Minn. Stat. § 260C.301, subd. 2(a)(1) (2008). Appellant-father claims the county did not make reasonable efforts to facilitate contact. But the

district court determined that social services made reasonable efforts at reunification, including case coordination services and counseling. Appellant-father has provided no evidence to the contrary.

The supreme court has held that abandonment can be found by actual desertion of the child and "an intention to forsake the duties of parenthood." *In re Welfare of Staat*, 287 Minn. 501, 506, 178 N.W.2d 709, 713 (1970). Abandonment cannot be found due to misfortune alone. *Id.* In *Staat*, a father was imprisoned, and the court found that his minimal contact with his children was not intentional. *Id.* But the court went on to conclude that the father's misfortune coupled with a lack of financial support, visits, correspondence or any evidence showing his interest in the welfare of the child, constituted abandonment. *Id.* In *In re Welfare of L.A.F.*, a district court's ruling that a father abandoned his child was upheld when he showed no true intention to parent. 554 N.W.2d 393, 399 (Minn. 1996).

Here, the social worker testified that appellant-father never expressed a desire to gain custody of his son, and has not had a significant relationship or any contact with his son for several years. Both the social worker and guardian ad litem testified that appellant-father had abandoned his son, and that his parental rights should be terminated.

Appellant-father, who resides in Indiana, provides no evidence of any contact with his son in several years. Like the fathers in *Staat* and *L.A.F.*, appellant-father has provided no evidence of visits, financial assistance, or genuine interest in the welfare of his son. Furthermore, unlike the father in *Staat*, whose imprisonment prevented him from contacting his son, appellant-father has made no showing that his lack of contact with his

son was anything other than intentional. Appellant-father merely provides conclusory statements to support his argument that he did not abandon his son. Thus, appellant has not shown that he has a debatably meritorious defense. *See Coats*, 633 N.W.2d at 511 (rejecting mother's unsupported claims of interest in her child's welfare).

Reasonable Excuse for Failure to Act

The district court found that appellant-father provided no reasonable excuse for his failure to appear for his TPR trial. Appellant-father claims that his lack of funds to travel from Gary, Indiana, to the hearing in Minnesota should excuse his failure to attend. He provides no evidence supporting his claim. Appellant-father states that he did not have sufficient notice of the proceedings. But the default judgment terminating his parental rights resulted from his failure to attend the December 22, 2008 hearing, of which he undeniably had notice. Further, the district court found that appellant-father had notice of earlier proceedings, starting in October of 2008, but expressed no desire to gain custody of his son. Appellant-father provides nothing but unsupported claims to refute this.

Appellant-father also argues that the county did not provide him with assistance to attend the hearing. But appellant-father provides no evidence that he intended or attempted to attend the hearing, or that he requested county assistance to attend. In *Coats*, the court held that a failure to appear was not excused when an assertion of confusion about dates due to medication was "unsupported by any evidence or affidavit." 633 N.W.2d at 511. Similarly, the district court in this case did not abuse its discretion in finding that appellant-father's failure to attend his TPR hearing was unexcused in the absence of any support for his claims.

Due Diligence After Entry of Judgment

It is undisputed that appellant-father satisfied the third *Coats* factor by acting with due diligence after the entry of the judgment. Appellant-father filed his motion to vacate the default judgment terminating his parental rights on February 26, 2009, less than 15 days after the court entered the order, well within the 90-day period prescribed by Minn. R. Juv. Prot. P. 46.02.

Prejudice to Other Parties

The district court found that M.T.W. would suffer substantial prejudice if the default judgment were vacated and the case were reopened. Because a foster family is prepared to adopt M.T.W., and because of M.T.W.'s improvement both in school and at home since residing with the foster family, the court found that it is in the child's best interests to finalize the proceedings. Appellant-father argues that his son would incur no prejudice because he could remain in foster care while the termination proceeding was reopened. But reopening the default judgment would necessarily delay the child's permanent placement. The supreme court has stressed "the importance of emotional and psychological stability to a child's sense of security, happiness and adaptation, as well as the degree of unanimity among child psychologists regarding the fundamental significance of permanency to a child's development." *In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986). Here, M.T.W. required counseling because of his family and living situation. The district court properly found that M.T.W. would suffer substantial prejudice by being subjected to further instability if the termination proceedings were reopened.

Because the burden is on the moving party to satisfy all four *Coats* factors, and because appellant-father only satisfied one, the court did not abuse its discretion by denying appellant-father's motion to vacate his default termination of parental rights.

II.

The district court terminated appellant-mother's parental rights by default due to her failure to appear. The court terminated appellant-mother's rights on multiple alternate grounds pursuant to Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (5) and (8) (2008), which provide respectively, that rights may be terminated if: the parent substantially or repeatedly failed to comply with the duties of being a parent, the parent is palpably unfit, court-directed reasonable efforts failed to correct the conditions leading to out-of-home placement, or the child is neglected and in foster care.

Appellant-mother fails to address the *Coats* factors, instead arguing that there was insufficient evidence for the district court to have terminated her parental rights. Because appellant-mother is challenging the district court's order denying her motion to vacate the default judgment, our review is for abuse of discretion based on the district court's findings on the *Coats* factors.

Reasonable Defense on the Merits

As discussed above, an appellant challenging the denial of a motion to vacate a default judgment must first establish a reasonable defense on the merits. *See Coats*, 633 N.W.2d at 510. In the context of a TPR proceeding, a proffered defense on the merits is deficient if it is supported by no more than conclusory statements. *Id.* at 511. The *Coats* decision cited mother's overall failure to comply with her case plan as support for its

determination that mother had not established a reasonable defense on the merits. *Id.* The supreme court noted in *Coats* that mother was provided with a case plan designed to address the mental-health and chemical-abuse problems that resulted in her inability to meet her children's basic needs, but repeatedly refused to participate in therapy and continued to abuse drugs. *Id.*

The district court found that appellant-mother's parental rights could be terminated under four separate statutory grounds. If appellant-mother fails to provide a reasonable defense on the merits for any of the grounds, the termination of parental rights stands. *See* Minn. Stat. § 260C.301, subd. 1(b) (2008) (providing that the district court may terminate parental rights based on one or more of the grounds set forth in the statute).

Appellant-mother argues that the termination of her parental rights was not supported by sufficient evidence. With regard to Minn. Stat. § 260C.301, subds. 1(b) (2) and (4), failure to comply with parental duties and being a palpably unfit parent, appellant-mother argues that she followed the social services case plan to the best of her abilities, and that she was unable to fully provide for her child due to her treatment programs, employment schedule, and financial insecurity. But the district court was presented with evidence that appellant-mother continued to use and abuse alcohol and drugs in the face of serious consequences, and in the presence of her son, despite his special needs and the possibility that he would require care. Furthermore, appellant-mother received $1,295 a month in Supplemental Security Income and paid $699 in rent, but did not always provide basic necessities for M.T.W., allegedly spending much of the money on drugs.

Like the mother in *Coats*, appellant-mother was provided a case plan designed to address the mental-health and chemical-abuse problems that resulted in her inability to meet her child's basic needs, but failed to follow the plan by continuing to abuse drugs and alcohol. Appellant-mother was found intoxicated and passed out in a snow bank less than a week before her TPR trial. She entered detoxification units five times in the month leading up to trial. The district court had ample evidence to conclude that appellant-mother both failed to comply with her parental duties and was palpably unfit to parent based on Minn. Stat. § 260C.301, subds. 1(b) (2) and (4). Appellant-mother has provided nothing more than conclusory statements to indicate that she is fit to parent or that she could comply with the duties of being a parent. *See Coats*, 633 N.W.2d at 511.

Appellant-mother also argues that there was insufficient evidence that social services made reasonable efforts to reunify her and her child, as required by Minn. Stat. § 260C.301, subd. 1(b)(5). "Reasonable efforts at rehabilitation are services that go beyond mere matters of form so as to include real, genuine assistance." *In re Welfare of Children of S.W.*, 727 N.W.2d 144, 150 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Mar. 28, 2007). Reasonable efforts do not include efforts that would be futile. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004). It is undisputed that in this case appellant-mother was provided with opportunities for inpatient and outpatient chemical dependency treatment and aftercare; appellant-mother was given parenting counseling, and allowed supervised and unsupervised visits with her son; both appellant-mother and her son were provided with guardians ad litem; and a social worker was assigned to the case. These efforts to correct the conditions that led to

M.T.W.'s removal from the home and to reunite appellant-mother with her son were reasonable, genuine attempts at assistance.

Appellant-mother further argues that she corrected the conditions that led to out-of-home placement, because she completed chemical dependency treatment and a parent assessment as required by her case plan. But it is undisputed that she was in and out of the hospital and detox centers multiple times in the month preceding the trial. Additionally, although appellant-mother completed a parenting assessment, it stated that "alternative placement for [M.T.W.] should be considered as [appellant-mother] may not be able to stabilize within the time frame of Child Protection." After an inpatient and outpatient chemical dependency treatment history that included missed and diluted urinalysis tests and missed meetings, appellant-mother attended aftercare, but her counselor stated that she was not progressing and would not benefit from continuing. Thus, the district court found that the conditions that led to out-of-home placement had not been corrected. Appellant-mother has provided no evidence that she has a supportable, debatably meritorious defense to the district court's conclusion that social services' reasonable efforts at reunification failed.

Finally, appellant-mother argues that the district court had insufficient evidence to conclude that her child was neglected and in foster care, as provided in Minn. Stat. § 260C.301, subd. 1(b)(8). It is undisputed that M.T.W. was in foster care. Regarding claims of neglect, the court was presented with evidence that: appellant-mother used drugs and alcohol while at home with M.T.W. who had special needs; M.T.W.'s personal care assistant often had to work more than her scheduled time to make sure that M.T.W.'s

needs were met; appellant-mother attempted suicide; appellant-mother refused to feed M.T.W. despite repeated requests during the first 45 minutes of a one-hour supervised visit; after M.T.W. was adjudicated CHIPS, appellant-mother missed scheduled visits with him and missed appointments at his school; and during supervised visits, appellant-mother showed minimal engagement or communication with her son. Furthermore, M.T.W. still wore diapers and ate through a feeding tube when he resided with appellant-mother, but these conditions were quickly resolved when he began foster care. These undisputed facts, coupled with appellant-mother's continued drug and alcohol abuse before her TPR trial, show neglect by clear and convincing evidence.

The district court had evidence to support its conclusions that appellant-mother's parental rights should be terminated pursuant to all four independent, alternate statutory grounds. Appellant mother asserts nothing more than unsupported conclusory statements to refute the district court's findings. Thus, the district court did not abuse its discretion in concluding that appellant-mother had no reasonable defense on the merits to any of the grounds for which her parental rights were terminated.

Reasonable Excuse for Failure to Act

Appellant mother does not argue that she had a reasonable excuse for failure to act, because she does not address the *Coats* factors. But it is undisputed that appellant-mother failed to appear for her TPR trial because she had become intoxicated and had to be taken to the hospital. In *Coats*, the supreme court held that a mother's failure to appear for a TPR trial was not excused based on an unsupported assertion of confusion about dates, given her history of chemical dependency. 633 N.W.2d at 511-12.

Minnesota courts have never held that voluntary intoxication is a reasonable excuse for failure to attend a hearing. The district court did not abuse its discretion in concluding that appellant-mother's voluntary intoxication was not a reasonable excuse for failing to act.

Due Diligence After Entry of Judgment

The district court found that appellant-mother satisfied the third *Coats* factor, due diligence after entry of the order, by filing her motion to vacate the judgment well within the statutorily prescribed time limit.

Prejudice to Other Parties

Appellant-mother does not discuss whether reopening the proceedings would substantially prejudice other parties to the case. But the analysis for appellant-mother is identical to the analysis for appellant-father, above. The court found that M.T.W. would suffer substantial prejudice if the case were reopened, and appellant-mother has provided no evidence to the contrary. Thus, she has not satisfied the fourth factor.

Because the burden is on the moving party to satisfy all four *Coats* factors, and because appellant-mother only satisfied one, the court did not abuse its discretion by denying appellant-mother's motion to vacate the default termination of her parental rights.

Affirmed.