STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1811

In the Matter of the Welfare of
the Children of: S. H., Parent.

Filed April 13, 2010
Affirmed
Johnson, Judge

Becker County District Court
File No. 03-JV-09-1320

Stuart J. Kitzmann, Detroit Lakes, Minnesota (for appellant S.H.)

Michael Fritz, Becker County Attorney, Jennifer R. Jacobs, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent Becker County Human Services)

Julie Jones, Callaway, Minnesota (guardian ad litem)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

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

JOHNSON, Judge

The Becker County District Court terminated S.H.'s parental rights to three children on three independent grounds: that S.H. failed to satisfy the duties of the parent-child relationship, that S.H. is palpably unfit, and that reasonable efforts failed to correct the conditions that led to the children's out-of-home placement. The district court also

found that termination is in the children's best interests. On appeal, S.H. argues that the record does not support the district court's findings or the ultimate determination to terminate her parental rights. We conclude that the district court's findings are supported by substantial evidence and that the district court did not err by deciding that termination is appropriate. Therefore, we affirm.

FACTS

S.H. gave birth to the three children at issue in this case: A.H. in 1995, D.H. in 1996, and C.H. in 2005. The children's biological father is deceased.

In April 2008, S.H. and her three children were living with her fiancé, K.B. The state prosecuted K.B. for an incident occurring on April 12, 2008. As the state alleged and proved, K.B. physically abused A.H. by hitting him in the face, thereby causing bruising around his right eye. In January 2009, a jury found K.B. guilty of malicious punishment of a child and domestic assault. In February 2009, K.B. was sentenced to 27 months of imprisonment on the conviction of malicious punishment of a child.

Upon the report of K.B.'s assault of A.H., all three of S.H.'s children were removed from S.H.'s custody and placed in emergency protective care. On April 15, 2008, Becker County filed petitions alleging that the three children were in need of protection or services. S.H. initially denied the allegations in the petitions but admitted them at a pretrial hearing on May 6, 2008. Out-of-home placement plans were developed for each child and were signed by S.H. in April 2008. The district court approved the plans on May 23, 2008.

After the children were removed from S.H.'s home, S.H. had supervised visits with them, initially three times per week but later sometimes only twice per week. S.H. canceled or shortened approximately 20 percent of her scheduled visits. On one day in March 2009, S.H. visited K.B. in prison even though she had canceled a visit with her children that was scheduled for the same time. The person supervising the visits noted that S.H. sometimes would intentionally ignore A.H. and D.H. and not respond to their attempts at conversation. S.H. never progressed to unsupervised visits because of concerns about the safety of the children. S.H. generally cooperated with other services offered and coordinated by the county.

In May 2009, Becker County filed a petition to terminate S.H.'s parental rights to the three children. The petition alleged three statutory bases for termination: (1) failure to comply with duties of parent-child relationship, *see* Minn. Stat. § 260C.301, subd. 1(b)(2) (2008); (2) palpable unfitness, *see* Minn. Stat. § 260C.301, subd. 1(b)(4) (2008); and (3) failure of reasonable efforts to correct conditions leading to placement, *see* Minn. Stat. § 260C.301, subd. 1(b)(5) (2008). The matter was tried on two days in July 2009. In September 2009, the district court issued its findings of fact and conclusions of law and ordered that S.H.'s parental rights be terminated. The district court concluded that the county had proved all three statutory bases for termination and that termination would be in the children's best interests. S.H. appeals.

D E C I S I O N

S.H. argues that the district court erred by finding that the county proved each of the three bases for termination of her parental rights and in finding that termination would

be in the children's best interests. "We review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "We give considerable deference to the district court's decision to terminate parental rights," but we also "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *Id.* We will affirm a district court's termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *Id.* (citation omitted).

I. Grounds for Termination

A. Failure to Correct Conditions Leading to Placement

A district court may terminate parental rights to a child if it finds that "following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5). There is a rebuttable presumption that reasonable efforts have failed if "(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"; (ii) the out-of-home placement plan has been filed with and approved by the court; "(iii) conditions leading to the out-of-home placement have not been corrected"; and "(iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family." *Id.*

In this case, the district court found that the "evidence is sufficient to trigger the statutory presumption that reasonable efforts failed to correct the conditions leading to the child's placement" and that S.H. "has not rebutted that presumption." Accordingly, our review is focused on the evidence relevant to the four elements of the presumption in the second sentence of subdivision 1(b)(5).

With respect to clause (i) of the presumption, it is undisputed that A.H., D.H., and C.H. were placed out of the home by an order dated April 16, 2008. When S.H.'s parental rights were terminated on September 1, 2009, the children had resided out of the parental home under court order for more than 12 of the preceding 22 months. Thus, the first requirement of the presumption in the second sentence of subdivision 1(b)(5) is satisfied.

With respect to clause (ii) of subdivision 1(b)(5), the case plan was filed with and approved by the district court in May 2008. Thus, the second requirement of the presumption in the second sentence of subdivision 1(b)(5) is satisfied.

With respect to clause (iii) of subdivision 1(b)(5), the evidence supports the finding that the "conditions leading to the out-of-home placement have not been corrected." Minn. Stat. § 260C.301, subd. 1(b)(5)(iii). Proving "noncompliance with a case plan" is one way to prove a failure to correct pursuant to subdivision 1(b)(5). *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 663 (Minn. 2008). One of the requirements of the case plan was "to build trust with her children to prove to the kids that she will keep them safe and protected from harm." The case plan also required S.H. "to work with the in-home therapist to build trust with her children and prove to her

children that she will keep them safe and protected from harm." In addition, to ensure the children's safety, the case plan required the following of S.H.:

> (1) the completion of a Capacity to Parent Evaluation and follow-through with recommendations, (2) addressing her mental health needs, (3) participation in Intensive In-home Family Therapy and implementation of effective communication and discipline strategies to meet her children's needs and work with the therapist to build trust with her children to prove to the kids that she will keep them safe and protected from harm, (4) participation in the Family Group Decision Making process, (5) signing all necessary releases of information, and (6) cooperation with home visits.

The district court found that S.H. "has not substantially complied with the Case Plan" because she "continues to deny the physical abuse of her child that led to the out of home placement" and "has failed to develop a sense of trust and in no way has demonstrated her commitment to keeping them safe from future harm." In particular, the district court found that S.H. "made no progress in building trust and proving to children she would keep them safe; despite [K.B.'s] conviction [S.H.] in no way acknowledged even the possibility that [A.H.] was abused."

The district court's finding that S.H. failed to correct the conditions that led to the out-of-home placement is supported by substantial evidence. Susan Stoltenburg, a licensed social worker with Becker County Human Services and the case manager assigned to the family, testified about S.H.'s "failure to terminate her relationship with the perpetrator of the abuse that occurred in the home, her failure to accept any responsibility for her children's feelings, [and] her inability to put her children's needs above her own." Stoltenburg testified that she does not "feel that [S.H.] has it in her

capabilities to protect the children from any abusive relationships, whether it be [K.B.] or someone else" and that both D.H. and A.H. have expressed fears "that their mom would not protect them from [K.B.] or any other boyfriend that she might have in the future."

S.H. contends that the district court clearly erred by implicitly finding that she "did not comply with her case plan because she never acknowledged that K.B. may have abused A.H." despite the fact that the case plan did not require her to admit that K.B. abused A.H. or to sever her relationship with K.B. But Stoltenburg testified,

> Being able to demonstrate the ability to protect her children was part of the case plan. That would be a way to demonstrate that she wanted to protect [A.H.] by believing what her son was stating to everybody and doing everything possible to insure that he would never be put in harm's way again.

Stoltenburg further testified about her concerns that, if the children were returned to their mother, "the abuse would continue, either when [K.B.] returns to the home, or if he should for some reason not return to the home, I believe that [S.H.] would again choose someone with similar behaviors. I also believe that [S.H.] herself is at risk of abusing her children." This evidence is sufficient to support the district court's findings. Thus, the third requirement of the presumption in the second sentence of subdivision 1(b)(5) is satisfied.

With respect to clause (iv) of subdivision 1(b)(5), the record indicates that the county made significant and reasonable efforts to reunite S.H. with her children. Genny Kuhn, an intensive in-home therapist, testified that she began working with S.H. and the children in September 2008 to assist S.H. in developing necessary parenting skills. In

addition to intensive in-home therapy, multiple services also were put in place, including family group decisionmaking meetings, individual counseling, and supervised visits. James Knutson, a licensed psychologist, engaged in individual counseling sessions with A.H. and S.H. that were designed to improve their relationship. Thus, substantial evidence supports the district court's findings concerning the county's efforts at reunification.

S.H. contends that the district court clearly erred by finding that reasonable efforts had been made because "[n]one of the services offered by Becker County were tailored towards S.H. ending her relationship with K.B. or admitting his guilt, rendering S.H. incapable of satisfying Becker County that she had corrected the conditions that led to the out-of-home placement of her children." "The nature of the services which constitute 'reasonable efforts' depends on the problem presented." *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). S.H.'s case plan did not explicitly require her to admit that K.B. abused A.H. or to end her relationship with K.B. Rather, S.H.'s case plan required her to build trust with her children and to prove that she could keep them safe. The record reflects that S.H.'s therapy sessions addressed these issues. Thus, the fourth requirement of the presumption in the second sentence of subdivision 1(b)(5) is satisfied.

In sum, the evidence is sufficient to trigger the statutory presumption that reasonable efforts "failed to correct the conditions leading to the child's placement" and to establish that S.H. has not rebutted that presumption. Minn. Stat. § 260C.301, subd. 1(b)(5).

B. Failure to Comply with Parental Duties

A district court may terminate parental rights to a child if

> [1] the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and [2] either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.

Minn. Stat. § 260C.301, subd. 1(b)(2).

With respect to the first prong of subdivision 1(b)(2), the district court found that S.H. has "neglected to provide her children with the emotional support required of a parent and child relationship" and "has failed to prove to her children that she can keep them safe from harm." The evidentiary record supports the district court's findings on this issue. Stoltenburg testified that S.H.

> has a pattern of being with abusive men, and she has shown that she will cover for them or choose them over her children. Both [D.H.] and [A.H.] have expressed fears to me that their mom would not protect them from [K.B.] or any other boyfriend that she might have in the future.

In addition, Karen Velaski-Schmit, a licensed clinical social worker, testified that by refusing to acknowledge the possibility that abuse occurred, S.H. failed to "provid[e] emotional support for [her] children" because "[c]hildren need to feel supported and need to feel that people are emotionally available to them and particularly their parents."

S.H. contends that the district court clearly erred in this finding. She asserts that, other than a single instance in which she informed her children that she was breaking up with K.B., even though she did not actually do so, "there is nothing in the record to support the conclusion that this deception (assuming she did not mean what she said at the time) was continuous or repeated." But even if the record establishes only that S.H. lied to her children about breaking up with K.B. on one occasion, the record nonetheless supports the district court's finding that S.H. neglected her duty to provide her children with the care necessary for their "physical, mental, or emotional health and development." Minn. Stat. § 260C.301, subd. 1(b)(2). This court has recognized that "'parentage [is not an absolute right of property, but] is in the nature of a trust [reposed in them,] and is subject to [their] correlative duty to protect and care for the child.'" *In re Child of P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003) (quoting *Nelson v. Gibson (In re Adoption of Anderson)*, 235 Minn. 192, 200, 50 N.W.2d 278, 284 (1951)), *review denied* (Minn. Apr. 15, 2003). Kuhn testified that S.H. has not made any progress in building trust between herself and the children. Thus, the district court's findings concerning the first prong of subdivision 1(b)(2) are supported by substantial evidence.

With respect to the second prong of subdivision 1(b)(2), the district court found that S.H. failed to demonstrate an ability "to protect her children or to make the children's welfare her primary concern." The district court further stated that S.H.'s "failure to satisfy key elements of the court ordered Case Plan provides ample evidence of her lack of compliance with the duties and responsibilities of the parent-child relationship."

The evidentiary record supports the district court's findings on this issue. Stoltenburg testified that S.H. has not yet corrected the conditions that existed at the time of the April 2008 petitions and further testified about her doubts as to whether S.H. "can provide an emotionally safe environment for the children or physically safe environment for the children." Specifically, Stoltenburg stated that S.H. has

> failed to demonstrate the she is willing to do whatever it takes to insure that her children will be safe in her care. She has failed to demonstrate that she can adequately meet all of their needs during supervised visits, including the therapeutic sessions. She has stated to me herself that she has concerns with being able to manage [A.H.'s] behaviors. She has complained about [D.H.'s] behaviors. She has told me she struggles to manage all three children when they're together. With all of the children's special needs and with [S.H.'s] own mental health needs and, again, her ongoing relationship with [K.B.] and the inability to break free of that and focus on her children would demonstrate to me that she has not corrected the conditions.

Stoltenburg also testified that she has "not seen any responsibility towards the chemical use that was happening in the home" and that she has "not seen consistent interaction with the children during the visits that would demonstrate ability to manage all three children on a full-time basis with all their special needs." In addition, Dr. Kathleen Schara, a clinical psychologist, testified about S.H.'s inability to protect her children from future abuse because "a person who won't even consider the possibility that physical abuse has occurred is going to have a very difficult time defending her children if the need arises because she won't consider that there could be a need for protection."

S.H. also contends that the district court clearly erred because "the record suggests that S.H. has knowledgeable insight into her children's needs and has made good

progress in addressing them." But the record also shows that S.H. has not demonstrated that she is able to "manage all three children on a full-time basis with all their special needs" or that she is able to protect her children from future abuse. Whatever evidence may exist about S.H.'s "insight" does not overcome the evidence discussed above. Thus, the district court's findings concerning the second prong of subdivision 1(b)(2) are supported by substantial evidence.

In sum, the evidence is sufficient to satisfy the requirements of section 260C.301, subdivision 1(b)(2). Because we have affirmed the district court's findings with respect to two statutory grounds for termination, we need not discuss the third ground identified by the district court. *See S.E.P.*, 744 N.W.2d at 385; *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005).

II. Children's Best Interests

S.H. also argues that the district court erred by concluding that termination is in the children's best interests. "In analyzing the best interests of the child, the court must balance three factors: (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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2008). "Whether termination of parental rights is in a child's best interests is a decision that rests within

the district court's discretion." *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

The district court found that S.H. "has demonstrated that she is unwilling and unable to take [A.H.] back into her home, now or in the future" and that "it is in the best interest of the children that they remain together as an intact sibling group." The district court's findings are supported by the evidence. S.H. testified that she is unwilling to have A.H. in her home because she does not believe that she can control his behavior. Bridgette Eastman, the children's mental-health case manager, testified that she does not believe that S.H. is able to provide or care for A.H.'s needs. Eastman also testified that the children should stay intact as a sibling group because they "have expressed the desire to stay together and they have improved their relationship over the past year and I think it would be unfortunate if that were to deteriorate." In addition, Stoltenburg testified that it is in the children's best interest for them to remain together as an intact sibling group and for S.H.'s parental rights to be terminated. Furthermore, Kuhn testified that the children should remain together as a sibling group because "[t]hey have experienced a lot of trauma and loss already in their life" and "they are very bonded to each other." Thus, the district court's findings regarding the children's best interests are supported by substantial evidence.

In sum, the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous. *See S.E.P.*, 744 N.W.2d at 385.

Affirmed.