STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1989

In the Matter of the Welfare of the Child of:
K. P. and A. P., Parents.

Filed April 13, 2010
Affirmed
Minge, Judge

Dakota County District Court
File No. 19HA-JV-08-1595

Sharon L. Freiling, Montpetit, Freiling & Kranz, South St. Paul, Minnesota (for appellants K.P. and A.P.)

James C. Backstrom, Dakota County Attorney, Kenneth A. Malvey, Assistant County Attorney, Kelly Moore, Certified Student Attorney, Hastings, Minnesota (for respondent county)

Ramona M. Olson, Hastings, Minnesota (Guardian ad Litem)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

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

MINGE, Judge

Appellants challenge the termination of their parental rights, arguing that the record lacks clear and convincing evidence that the county made adequate efforts to reunite the family or that termination was in the child's best interests. We affirm.

FACTS

This appeal arises from the district court's order terminating the parental rights of appellants K.P. (mother) and A.P. (father) to their child, L.P. K.P. has four other children. Her parental rights to these children were terminated based on various parenting problems. For three of her children, the termination proceedings were voluntary. Her parental rights for the fourth child were terminated involuntarily after a default proceeding. Father, who was the parent of one of those four other children, relinquished his parental rights to that child.

L.P. was born in Dakota County in July 2008. Prior to L.P.'s birth, Hennepin County Child Protection contacted the hospital where L.P. was to be born, told it that appellants were unable to parent, and requested that child protection be involved if L.P. was born there. When L.P. was born, the hospital notified Dakota County Social Services (DCSS). The hospital also notified the police, who placed a 72-hour hold on L.P. After an Emergency Protective Care hearing, L.P. was placed in the legal custody of DCSS and a Child in Need of Protection or Services (CHIPS) petition was filed alleging that "based upon Hennepin County's experience, the parents . . . had limited cognitive ability."

A CHIPS review hearing was held in November 2008. The reporting social worker noted that, after some initial difficulty making scheduled visits, appellants were consistently making twice-weekly supervised visits. But he reported that although appellants had completed their psychological and parenting evaluations, they had failed to follow through on several testing sessions. Both mother and father have been

diagnosed as mildly mentally retarded, with Fetal Alcohol Syndrome (FAS) and attention-deficit/hyperactivity disorder (ADHD). L.P. has been diagnosed with torticollis, a syndrome affecting the neck muscles, and also with language, gross motor, and cognitive delays. L.P.'s torticollis requires physical therapy. The CHIPS petition summarized appellants' history with their other children, and noted that there were ongoing concerns about their ability to raise children and about father's history of committing sex abuse. The social worker also reported that, while it was evident that appellants cared "a great deal" for L.P., "based on cognitive/intellectual capacity it is not clear that they would be able to retain sufficient information . . . to perform the complex tasks of parenting and to provide a safe and stable environment for a child." After this hearing, the district court ordered father to successfully complete a sex-offender treatment program.

At a January 2009 CHIPS review hearing, the reporting social worker noted that appellants had been inconsistent with their visitation, that their visitation contract at Life-Long Mentoring had been terminated due to missed visits and late arrivals, and that appellants stated that "they have lives and that they cannot always drop what they're doing to facilitate visitation with their son." The social worker recommended ceasing reunification efforts and visitation, and the district court adopted this recommendation. The district court ordered reunification efforts reinstated after a March 2009 CHIPS review hearing.

On April 15, 2009, DCSS filed a termination of parental rights (TPR) petition, alleging that the parents had "substantially, continuously, or repeatedly refused or

neglected to comply with the duties imposed upon the parents by the parent/child relationship," that they are palpably unfit to be parties to the parent/child relationship, and that "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." The matter was tried in August 2009, and both the reporting social worker and the guardian ad litem testified in favor of terminating appellants' parental rights. The district court granted the TPR petition, and this appeal follows.

D E C I S I O N

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). Courts may order termination of parental rights on the basis of one or more of the nine criteria listed in Minn. Stat. § 260C.301, subd. 1(b) (2008). "An order terminating parental rights is reviewed 'to determine whether the district court's findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous.'" *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (quoting *In re Welfare of P.R.L.*, 622 N.W.2d 538, 543 (Minn. 2001)). "Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

I.

The first issue raised by appellants is whether the district court erred in finding that there was clear and convincing evidence that the county made reasonable efforts toward reunifying appellants with L.P. When terminating parental rights, a district court must make a finding that the social service agency provided reasonable efforts to reunify the family. Minn. Stat. § 260C.301, subd. 8(1) (2008). In its order terminating parental rights, the district court made a specific finding that "[r]easonable efforts have been made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to return home, or to provide permanency for the child."

Appellants' first assert that the county did not assist father in obtaining sex-offender treatment. At trial, father testified that he was "willing to do anything I had to do in order to get [L.P.] back." He further testified that the reporting social worker instructed him to check with his insurance company to see if sex-offender treatment was covered, that he determined that his insurance did not cover such treatment and so informed the social worker, but that he never received any additional information about county financial assistance with the cost of such treatment. However, the social worker testified that father never contacted his insurance company to set up the treatment, that father was "very resistant" to receiving sex-offender treatment, that father did not express willingness to receive treatment until the county had already filed the TPR petition in April 2009, that even then father failed to follow through with obtaining treatment, and that father had been informed that public assistance was available to cover the cost of treatment. The social worker also testified that after father indicated that he did not like

the first center that was recommended, a second treatment center was recommended, but that father never followed through with treatment at the second center. Of the two conflicting accounts, the district court's findings imply that it found the social worker's account more credible. According the proper deference to the district court's credibility determination, we find appellants' contention that the county did not adequately assist father in obtaining sex-offender treatment unconvincing.

Second, appellants challenge the district court's finding that their visitation with L.P. was inadequate. In particular, appellants assert that their visitation was regular until the district court ceased reunification efforts in January 2009, at which time both appellants and the foster parents believed that visits were to cease. But the social worker's report to the district court for the January 2009 CHIPS review hearing contradicts this assertion. That report states that appellants "have been inconsistent with their visitation schedule and had their visitation by Life-Long Mentoring stopped for cancellations and late arrivals." At trial, the GAL testified that after reunification efforts were restarted in March 2009, L.P,'s foster parents contacted appellants and offered them an opportunity to visit L.P. in March, yet appellants told the foster parents that they preferred to wait until July, which was closer to L.P.'s birthday. While the record indicates that appellants did visit L.P. once in April and once again in June, the social worker's and the GAL's testimony support the district court's finding that appellants visitation with L.P. was inadequate. The district court did not clearly err in making this finding.

Third, appellants fault DCSS for failing to take their cognitive difficulties into account in assisting them with their case plan. The record, however, shows that DCSS did make an effort to prepare appellants for parenthood by recommending and providing parenting assessments and classes. While appellants assert that they were "left to their own devices" to accomplish unfamiliar goals, their social worker reported that appellants were participating in parenting classes that were focused on appropriate goals, but that their cognitive difficulties limited their ability to retain the information presented to them. The record shows that appellants displayed a limited ability to learn parenting skills despite being given these services, and that appellants had difficulty understanding child development and displaying effective parenting skills. In particular, as stated in father's parenting assessment, "despite professional support and parenting education, it's not clear that [father] has the cognitive\intellectual capacity to retain sufficient information and to use such knowledge to perform the complex tasks of parenting and providing a stable home environment." Mother's parenting assessment was more positive, stating that mother had a "cursory knowledge of child development specific to [L.P.] and to particular discrete activities or conditions," but "does not appear to understand the larger concept of parenting in such a way as to synthesize appropriate behaviors without significant supervision." Mother's assessment also stated that the ultimate issue affecting her parenting was "her low cognitive/intellectual abilities that seem to negatively affect her judgment." The assessment also included statements of concern about mother's lack of support and dependency upon father. The district court's findings reflect these assessments, and indicate that the issue was not appellants' access to appropriate

parenting education, but their fundamental inability to parent effectively despite receiving such education.

Finally, appellants allege that it would have been reasonable for the district court to give them an additional six months to satisfy their case plan, considering the district court's findings that appellants had demonstrated significant love and affection for L.P. and could be significant persons in L.P.'s life. But appellants cite no authority indicating that here, where L.P. had been in out-of-home placement for ten and one-half months before the TPR petition was filed, six months was an unreasonably short period. Moreover, Minn. Stat. § 260C.201, subd. 11a (2008), provides that a child under eight years old should be subject to a permanency hearing if he is in out-of-home placement for six months. As the district court noted here, appellants have great affection for L.P. and a strong desire to be parents. The record supports the district court's findings that appellants' inability to parent arises not from their lack of access to services, but from their failure to "take[] advantage of the services offered to them" and their inability to care for L.P. In light of the amount of time given to appellants to show compliance with their case plan and their failure to follow through on elements of the plan, in particular father's reluctance to obtain sex-offender treatment, we conclude that the district court did not abuse its discretion in declining to allow appellants additional time to satisfy their case plan.

Finally, we observe that while mother's parental rights were terminated voluntarily as to three of her other children, her parental rights were terminated involuntarily as to another of her children after default proceedings in Illinois.

Reasonable efforts at reunification are not required when the parental rights of the parent to another child have been terminated involuntarily. *See* Minn. Stat. §§ 260C.301, subd. 8(2) (requiring court terminating parental rights to make specific findings that reasonable efforts at reunification are not required under section 260.012), 260.012 (a)(2) (2008). Moreover, a parent is presumed palpably unfit to be a party to the parent and child relationship when her rights to one or more children are involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4). But we need not address whether these statutory provisions should apply after default proceedings, where the parent did not appear and was presumably unrepresented, because we conclude that the district court did not err in finding reasonable efforts at reunification.

II.

The second issue is whether termination of appellant's parental rights was in L.P.'s best interests. Even if grounds for termination are supported by clear and convincing evidence, the district court still must find that termination is in the child's best interests. *R.W.*, 678 N.W.2d at 55. Here, the district court found that L.P.'s "best interests will be served by terminating the parental rights of [appellants] and allow[ing] L.P. to be adopted to the only family he has known since birth," which is also the family into which L.P.'s older sister has been adopted. In reaching this conclusion, the district court stated that "this case is about the parent[s'] inability to adequately care for the child and the need for permanency." As to appellants' inability to care for L.P., the district court found that appellants were "either unable or unwilling" to follow case plans and recommendations made by Hennepin and Dakota County social services, and noted that

"[a]ll of the professionals involved in this matter have indicated the parents are unable to fully care for their child and his needs."

In assessing the best interests of the child, we note that a district court should rely "not primarily on past history, but to a great extent upon the projected permanency of the parent[s'] inability to care for his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 649 (Minn. 1995) (quotation omitted). Appellants fault the district court for relying too heavily on prior facts showing that (1) appellants' parental rights to their other children had been terminated; (2) L.P. had been in out-of-home placement for one year; (3) appellants never had custody of L.P.; and (4) L.P. was in placement with his older sister. Appellants contend that there was too little acknowledgment of the progress that they made with regard to the placement plan. But a district court may take past patterns of behavior into account in determining whether those patterns are likely to continue. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893-94 (Minn. 1996); *In re Welfare of J.D.L.*, 522 N.W.2d 364, 367 (Minn. App. 1994).

The district court's order terminating parental rights relied most heavily on appellants' unwillingness and inability to follow their case plans, and their inability to care for L.P. These findings are substantially supported by reports of appellants' cognitive difficulties and their unwillingness to follow through with their case plans. Past case notes, particularly those from Hennepin County, go directly to the issue of appellants' cognitive limitations and permanent inability to care for L.P., as well as persistent and unaddressed concerns about father's need for sex-offender treatment. In particular, with regard to E.P., the psychologist who conducted a parenting assessment

for Hennepin County found that appellants had "knowledge deficits regarding infant care and appear to lack ability to read their child's cues and perceive her needs," and that father "may not have the skills or potential to consistently and safely provide care for this child without substantial support, on-going guidance and treatment." The district court's reliance on these facts relate to issues and patterns of behavior that appear to be ongoing, and as such was proper.

In sum, we conclude that the district court did not clearly err in finding that termination of appellants' parental rights is in L.P.'s best interests.

III.

Appellants object to termination on the basis of more generalized criticism of how their case was handled. Appellants contend that the district court relied too heavily on their low I.Q.s and cognitive difficulties, and that while it was acknowledged in their psychological evaluations that they could benefit from parenting education and were motivated to learn parenting skills, "little was done" to help them acquire these skills. But, as discussed above, appellants failed to take advantage of the services offered to them, and the professionals who assessed appellants shared the concern that appellants' cognitive limitations affected their ability to acquire parenting skills.

Appellants also fault the district court for relying too heavily on the GAL's opinion testimony, which appellants characterize as "weak" because the GAL only observed appellants with their son on one occasion. Appellants cite Minn. Stat. § 260C.163, subd. 5(b)(1) (2008), which provides that a GAL must "conduct an independent investigation to determine the facts relevant to the situation of the child and

the family, which must include, unless specifically excluded by the court, . . . meeting with and observing the child in the home setting." Appellants did not object to the GAL's testimony on this ground at trial, and we will generally not consider matters not argued and considered in district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). However, we note that the statutes only require that the GAL meet with the child in "the home setting." Minn. Stat. § 260C.163, subd. 5(b)(1). Here, because L.P. was placed with foster parents, his "home setting" was the foster home.

Finally, appellants contend that the GAL's opinion was based too heavily on past facts. But, as with the district court's order, the GAL's identification of past facts reflects her concern that those facts indicate problems that are likely to arise in the future. Clear and convincing evidence supports that conclusion.

Appellants' challenges do not constitute a basis for us to conclude that the district court erred in considering evidence of their abilities or in relying on the GAL's evaluation.

Affirmed.

Dated: