STATE OF MINNESOTA
IN COURT OF APPEALS
A10-578

In the Matter of the Welfare of the Children of:
K. L. H. and N. J. P., Parents

Filed August 24, 2010
Affirmed
Wright, Judge

Dakota County District Court
File No. 19HA-JV-09-4239

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Considered and decided by Lansing, Presiding Judge; Wright, Judge; and Connolly, Judge.

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

WRIGHT, Judge

In this appeal from the district court's termination of appellant's parental rights to two of her children, appellant argues that the record lacks sufficient evidence to support the district court's determinations that (1) the county made reasonable efforts toward

reunification; (2) the evidence satisfies a statutory basis to terminate her parental rights; and (3) termination is in the children's best interests. We affirm.

FACTS

Appellant K.L.H. is the biological mother of three children: N.P., born in August 2001; A.P., born in July 2006; and S.P, born in August 2007. As a result of child-protection proceedings in Ramsey County, N.P. was placed in foster care in October 2008, and custody of N.P. was voluntarily transferred to K.L.H.'s sister in December 2009. This appeal, therefore, relates only to K.L.H.'s parental rights to A.P. and S.P.[1]

Shortly after 3:00 a.m. on April 2, 2009, police were dispatched to K.L.H.'s apartment for a child-welfare check based on a report that two children were left unattended and the mother was believed to be out drinking. When they arrived at K.L.H.'s apartment, the police discovered the apartment door unlocked, no adults were present, and no furniture was in the apartment. The police also found A.P. and S.P. alone in a bedroom that smelled strongly of urine. Both children were very dirty, and each had an infestation of head lice. Their diapers were soaked with urine, and they were wearing "filthy," ill-fitting clothing that was inappropriate for the weather. The children also had large areas of diaper rash and what appeared to be burned or bruised skin on their inner thighs. A search of the apartment produced no clean diapers for the children and little or no edible food. The children were put on a health-and-welfare hold and placed in foster care.

[1] A.P. and S.P.'s father, N.J.P., failed to appear for trial in this proceeding. His parental rights were terminated by default and that decision is not challenged on appeal.

Based on a petition filed by Dakota County (county), the district court adjudicated A.P. and S.P. children in need of protection or services under Minn. Stat. § 260C.007, subds. 6(3) (child lacks "necessary food, clothing, shelter, education, or other required care"), and 6(8) (child lacks "proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent") (2008). The district court continued the children's out-of-home placement and transferred custody of the children to the county. K.L.H. was given a case plan requiring that she complete psychological and parenting evaluations and follow the resulting recommendations, complete a chemical-dependency assessment, abstain from all mood-altering substances, submit to random chemical testing, attend regular visitation and parenting education, maintain a clean and safe home, and cooperate with the county.

In November 2009, the county filed a termination-of-parental-rights (TPR) petition under Minn. Stat. § 260C.301, subd. 1(b)(2) (neglect of parental duties), (4) (palpable unfitness), (5) (failure of reasonable efforts to correct the conditions leading to out-of-home placement), and (8) (child is neglected and in foster care) (2008). The TPR trial was held on January 25, 2010, at which point A.P. and S.P. had been in foster care for more than nine months. K.L.H., the guardian ad litem (GAL), and the county social worker assigned to the family testified at the trial. The district court also reviewed the reports of the GAL and social worker and several reports regarding K.L.H.'s parenting education, psychological treatment, and chemical-dependency treatment. The district court found clear and convincing evidence to support all four statutory grounds alleged. The district court also found that the county made reasonable efforts to reunite K.L.H.

with her children and that termination of K.L.H.'s parental rights was in the best interests of A.P. and S.P. The district court, therefore, terminated K.L.H.'s parental rights to A.P. and S.P. This appeal followed.

D E C I S I O N

A natural parent is presumed to be "a fit and suitable person to be entrusted with the care of his [or her] child and . . . it is ordinarily in the best interest of a child to be in the custody of [the] natural parent." *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). But a district court may terminate parental rights if there is clear and convincing evidence establishing at least one of the grounds for termination of parental rights set forth in Minn. Stat. § 260C.301, subd. 1(b) (2008), and if termination of parental rights is in the child's best interests. Minn. Stat. § 260C.301, subd. 7 (2008); *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

We review a district court's decision to terminate parental rights to determine whether the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous. *S.E.P.*, 744 N.W.2d at 385. A finding is clearly erroneous when it is either manifestly contrary to the weight of the evidence or it is not reasonably supported by the evidence as a whole. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). We "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing," but we give considerable deference to the district court's decision to terminate parental rights. *S.E.P.*, 744 N.W.2d at 385; *see also In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (noting that district court is in a "superior position to assess the credibility of

witnesses"). We will affirm the district court's termination of parental rights if there is sufficient evidence to support at least one statutory ground for termination and if termination of parental rights is in the best interests of the child. *S.E.P.*, 744 N.W.2d at 385.

I.

K.L.H. first argues that the record does not support the determination that the county made reasonable efforts to reunify K.L.H. with her children. Before terminating parental rights, the district court must find that the responsible social services agency made reasonable efforts to reunify the child and the parent. Minn. Stat. § 260C.301, subd. 8 (2008); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). "Reasonable efforts" is defined as "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services" to meet the specific needs of the child and the child's family in order to reunify the family. Minn. Stat. § 260.012(f)(2) (2008); *see In re Welfare of M.A.*, 408 N.W.2d 227, 235-36 (Minn. App. 1987) (describing minimum reasonable-efforts requirements), *review denied* (Minn. Sept. 18, 1987). Whether services constitute "reasonable efforts" depends on the nature of the problem, the duration of the county's involvement, and the quality of the county's effort. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990); *see also* Minn. Stat. § 260.012(h) (2008) (listing considerations). Services must "go beyond mere matters of form so as to include real, genuine assistance." *H.K.*, 455 N.W.2d at 532. But reasonable efforts do not include efforts that would be futile. *S.Z.*, 547 N.W.2d at 892.

The record supports the district court's finding that "[a] plethora of reunification services has been provided to [K.L.H.]" The county recommended and referred K.L.H. to various psychological services, including dialectical behavioral therapy, individual therapy, and a women's domestic-violence group. The county also provided K.L.H. with parenting-skills training and facilitated K.L.H.'s use of her visitation time by providing her with bus cards for transportation to visitation sessions. The county addressed K.L.H.'s chemical dependency by conducting assessments and recommending a treatment program. The county also sought to maintain regular contact with K.L.H. to supervise her progress.

K.L.H. argues that, despite the availability of these services, the county's efforts toward reunification were not reasonable because the county failed to provide her with the necessary transportation to comply fully with her case plan. Specifically, she challenges the district court's finding that she had Med Ride to assist her with transportation to appointments, arguing that a change in her insurance made Med Ride unavailable to her. But the district court credited the social worker's testimony that K.L.H. was able to use Med Ride through her new insurance "unless she has done something with the Med Ride to cause it to cancel." The social worker explained that K.L.H. had misused other transportation privileges. The record also reflects that K.L.H. ceased pursuing her treatment options even during the period when she acknowledges having had access to Med Ride. K.L.H.'s challenge to the county's efforts at reunification founded on the failure to provide her with transportation, therefore, fails.

K.L.H. also argues that the county's efforts toward reunification were not reasonable because she was not given sufficient time to complete her case plan. She cites Minn. Stat. § 260C.201, subd. 11a (2008),[2] for the proposition that she should have been given additional time to correct the conditions that led to her children's placement in foster care. Section 260C.201 requires the district court to hold a permanency hearing within six months after an out-of-home placement for any child under eight years of age, and it permits the district court to continue the case for up to six months if the parent has been in compliance with the case plan and has maintained contact with the child. Minn. Stat. § 260C.201, subd. 11a(a), (c)(1)(ii). Here, the record does not reflect that K.L.H. requested a continuance at the six-month review hearing in October 2009. In addition, the district court's decision not to continue the case for an additional six months has ample record support, including submissions from the social worker indicating that K.L.H. had failed to comply with the case plan and maintain regular visitation with the children. Moreover, the county's decision to file a TPR petition one month later, while still permitting and encouraging visitation and treatment, does not demonstrate a lack of reasonable efforts toward reunification. When viewing the record as a whole, the evidence establishes that the district court did not err by determining that the county made reasonable efforts to reunify K.L.H. with her children.

[2] K.L.H.'s brief refers to Minn. Stat. § 260C.301, subd. 11a, which is not a section within the Minnesota statutes. It is apparent from K.L.H.'s argument, however, that she is relying on Minn. Stat. § 260C.201 (2008).

II.

K.L.H. next challenges the district court's determination that there is clear and convincing evidence to establish the statutory grounds alleged in the TPR petition. The district court determined that the county established each of the four grounds alleged. Although only one statutory ground is necessary to sustain the district court's termination decision, *see S.E.P.*, 744 N.W.2d at 385, we address each in turn.

A.

A district court may terminate the parental rights of a parent who "has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship," but only if "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). Noncompliance with parental duties includes, but is not limited to, failure to provide a child with necessary food, clothing, shelter, education, or other care and control necessary for the child's physical, mental, or emotional health and development. *Id.*

The record reflects that K.L.H. has failed to provide her children with necessary shelter because she has not maintained a home suitable for the children. In April 2009, K.L.H.'s apartment was dirty, unfurnished, and contained hazardous conditions such as uncovered electrical outlets and prescription medication in locations that were accessible to the children. Even after the children were removed and the cleanliness concerns were noted, K.L.H. declined to clean the apartment. Although K.L.H. mitigated some of these

issues by July 2009, the apartment floor remained "very dirty." K.L.H. subsequently was evicted from her apartment, apparently for nonpayment of rent, and spent some time living in her father's apartment and some time at a friend's home. The housing proposal that K.L.H. presented at the time of trial was to have the children live with her in her father's apartment. But K.L.H.'s father opposed this plan, in part because his one-bedroom apartment was unsuitable. This evidence substantially supports the district court's determination that K.L.H. substantially, continuously, or repeatedly failed to maintain adequate shelter for her children.

The record also reflects that K.L.H. failed to provide the children with necessary care and control because she was unable or unwilling to parent the children appropriately. The children were originally discovered unsupervised in the middle of the night. When her children were taken out of the home, K.L.H. did not actively pursue contact with her children. Rather, she delayed seeking the county's assistance to see her children because she "didn't want to deal with" the social worker and the GAL. K.L.H. also delayed obtaining a doctor's note stating that she was lice-free, which was a prerequisite for visitation with her children. Once K.L.H. commenced visitation, the parenting educator observed that K.L.H. did not engage with her children even when intervention was needed to stop their violent behavior toward each other. The parenting educator also observed that K.L.H. was not receptive to guidance and was unwilling or unable to place the children's needs, even those that involved safety, before her own. For example, if K.L.H. was angry with the children's father, she sometimes used the children to retaliate against him by interfering with his visitation. The record reflects that K.L.H.'s inability

to parent the children appropriately persisted through late 2009, after which point visitation ended. When viewed in its entirety, the record amply supports the district court's determination that K.L.H. substantially, continuously, or repeatedly failed to provide necessary care and control for her children.

B.

A district court also may terminate the parental rights of a parent who is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4). A parent is palpably unfit if "specific conditions directly relating to the parent and child relationship" are of such a duration or nature that they render the parent "unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child." *Id.* A parent's mental illness or chemical dependency may support a determination of palpable unfitness if it contributes to the parent's present and foreseeable inability to care appropriately for the child. *T.R.*, 750 N.W.2d at 663; *S.Z.*, 547 N.W.2d at 892.

The record reflects that K.L.H. has significant psychological and chemical-dependency problems that contribute to her inability to recognize and remedy her parenting deficiencies. In particular, a July 2009 psychological evaluation and parenting assessment determined that K.L.H. has psychological problems and is unable to recognize and respond appropriately to her children's needs. The report accompanying the evaluation and assessment also concluded that K.L.H. would need to undergo chemical-dependency treatment and remain sober. The prognosis was "poor to guarded" that K.L.H. would be able to meet her children's needs, "contingent on her response to

supportive therapeutic services, maintaining her abstinence over a significant period of time, being successful in displaying change and improvement in meeting her mental health needs and parenting knowledge and skills." The evaluation and assessment report concluded that failure to address these issues would put her children at "physical or emotional risk." The district court credited and adopted the findings in this report.

K.L.H. was provided numerous opportunities to engage in treatment, and she consistently failed to do so by declining, delaying, or curtailing each service provided to her. Indeed, although she blames the county for the lapses in her treatment, K.L.H. does not directly dispute that she has unresolved psychological and chemical-dependency problems. Rather, K.L.H. asserts that the district court improperly relied on the Ramsey County proceeding in which custody of N.P. was transferred from K.L.H. to K.L.H.'s sister. In doing so, she correctly argues that, because the transfer of custody was voluntary, it "does not create a presumption" that K.L.H. is palpably unfit to parent her younger children. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (stating that presumption of palpable unfitness is based on prior involuntary transfer of custody). The district court, however, did not apply a presumption of palpable unfitness based on the transfer of N.P.'s custody. Rather, the district court focused almost exclusively on K.L.H.'s unwillingness to significantly engage any of the treatment options made available to her to improve her parenting capacity. Accordingly, the district court applied the proper legal standard, and its determination that K.L.H. is palpably unfit to parent A.P. and S.P. is supported by substantial evidence.

C.

Termination of parental rights also is permitted if "reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's [out-of-home] placement." *Id.*, subd. 1(b)(5). A.P. and S.P. were removed from K.L.H.'s home because she failed to properly supervise them, provide safe and appropriate housing, and tend to their welfare. The county made significant efforts to address K.L.H.'s mental illness and chemical dependency and to assist K.L.H. to better recognize and meet her parental responsibilities. The record reflects that, notwithstanding those efforts, at the time of trial, K.L.H. remained unable to maintain safe and appropriate housing or even to identify what appropriate housing would be for her children. K.L.H. also failed to complete any form of psychological or chemical-dependency treatment, and she demonstrated an unwillingness or inability to implement necessary parenting skills. The record, therefore, substantially supports the district court's determination that the county's reasonable efforts failed to correct the conditions leading to the children's out-of-home placement.

D.

Termination of parental rights also is permitted if "the child is neglected and in foster care." *Id.*, subd. 1(b)(8). A child is "neglected and in foster care" within the meaning of this provision if (1) the child has been placed in foster care by court order; (2) the child's parent's "circumstances, condition, or conduct are such that the child cannot be returned"; and (3) "despite the availability of needed rehabilitative services," the parent has failed to make reasonable efforts to adjust the circumstances, condition, or

conduct, or has willfully failed to meet reasonable expectations with regard to visiting the child. Minn. Stat. § 260C.007, subd. 24 (2008). In determining whether a child meets this definition, the district court considers the length of time the child has been in foster care, the parent's efforts toward remedying the conditions that led to foster-care placement, the parent's visitation record, and the appropriateness of services offered to the parent. Minn. Stat. § 260C.163, subd. 9 (2008).

As addressed above, K.L.H.'s efforts toward remedying the conditions that led to the removal of her children were minimal. She declined, delayed, or prematurely ended each service provided to her. Meanwhile, her young children were in foster care for more than nine months. And although K.L.H. visited her children, she missed some visits without explanation and cancelled other visits on short notice or with implausible or contradictory explanations. The record, therefore, substantially supports the district court's determination that A.P. and S.P. were neglected and in foster care.

In sum, the record reflects that A.P. and S.P. were placed in foster care because K.L.H. had chemical-dependency and mental-health problems that prevented her from caring for her children. Because nine months of reasonable efforts by the county to help K.L.H. address those problems and improve her parenting were unsuccessful, the district court did not abuse its discretion by determining that terminating K.L.H.'s parental rights was warranted under each of the four statutory grounds alleged.

III.

K.L.H. also argues that there is insufficient evidence to support the district court's determination that termination is in the children's best interests. In a TPR proceeding,

"the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7. The best-interests analysis in a TPR proceeding requires the district court to balance the child's interest in preserving the parent and child relationship, the parent's interest in preserving the parent and child relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *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." *R.T.B.*, 492 N.W.2d at 4. "Where the interests of the parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7.

The record reflects that A.P. and S.P. are very young and they have significant behavioral and cognitive delays. The children also have exhibited several behaviors that pose particular parenting challenges, including extreme tantrums and night terrors, violence toward each other, and eating or demanding to eat well beyond the point of sufficiency. Many of these behaviors continued through the time of the TPR trial, and the record reflects that contact with K.L.H. often correlated with the children exhibiting increased behavioral problems. According to the GAL, it was a "relief" for the children when visitation no longer occurred.

K.L.H. has not demonstrated that she is willing and able to address the significant needs of her children. K.L.H. failed to engage adequately in any of the treatment services recommended or provided to her, and she continues to display many of the same kinds of conduct that led to the out-of-home placement. During visits with her children, for example, K.L.H. consistently failed to attend to their needs; failed to supervise, redirect,

or discipline them as necessary to protect them from outside dangers or each other; used them and their needs to create conflict with their father; and often resisted or defied the guidance of the parenting educator. Based on all of this evidence, both the social worker and the GAL opined that termination was in the children's best interests.

K.L.H. contends that the GAL's opinion was unfounded because the GAL observed K.L.H. with her children only once and observed the children only in the foster home. But the district court was aware of the nature and extent of the GAL's interactions with K.L.H., the children, the foster parents, treatment professionals, and other individuals involved in this case. And the district court considered these factors when it deemed the GAL's opinion reliable. Moreover, the GAL's opinion is only one part of the evidentiary basis for the district court's decision, which we review based on the record as a whole. *See T.R.*, 750 N.W.2d at 660-61. The record in its entirety amply reflects that A.P. and S.P. have significant needs that K.L.H. is unable or unwilling to meet. The district court's finding that termination of K.L.H.'s parental rights is in the best interests of A.P. and S.P. is well supported by the record and, therefore, not clearly erroneous.

For all of the foregoing reasons, we affirm the district court's decision to terminate K.L.H.'s parental rights to A.P. and S.P.

Affirmed.