STATE OF MINNESOTA
IN COURT OF APPEALS
A10-707

In the Matter of the Welfare of the Child of: S. T. N., Parent.

Filed November 2, 2010
Affirmed
Shumaker, Judge

Blue Earth County District Court
File No. 07-JV-09-2685

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Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Shumaker, Judge.

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

SHUMAKER, Judge

Appellant-mother, S.T.N., challenges the termination of her parental rights (TPR), arguing that the record fails to show that (1) S.T.N. substantially, continuously, or repeatedly refused or neglected her parental duties; (2) S.T.N. is palpably unfit to be a party to the parent-and-child relationship; (3) the county made reasonable efforts to assist

S.T.N. in remedying problems leading to D.H.'s displacement; and (4) termination of parental rights is in the child's best interests. We affirm.

FACTS

S.T.N. is the mother of D.H., a male, born July 29, 2005. Since moving to Minnesota from Chicago in 2006, D.H. has been in and out of foster care seven times. Prior to the filing of the Child in Need of Protection or Services (CHIPS) petition, D.H. was placed in foster care from August 31 to September 4, 2006, because S.T.N. had left D.H. at Minnesota State University, Mankato, after she had an emotional outburst. D.H. was also in foster care from March 22 through 26, 2008, after S.T.N. was arrested on a warrant for failing to appear in court.

Since the CHIPS petition was filed in August 2008, S.T.N. has been arrested at least six times. D.H. was present for four of S.T.N.'s arrests, all of which were associated with disorderly, assaultive or alcohol-related behavior. Each arrest resulted in placement of D.H. in foster care.

D.H. has been in foster care continuously since January 2009, with two brief interruptions for trial home visits in July and November 2009. The July 2009 trial home visit ended after S.T.N. failed to return with D.H. from a court-approved visit to Chicago. Upon her return to Minnesota, S.T.N. sent D.H. back to Chicago with her sister. The district court ordered physical and legal custody be returned to Blue Earth County, and D.H. was placed back in foster care. The trial home visit in November 2009 ended when S.T.N. was arrested and charged with burglary in the first degree, assault in the second

degree, and domestic assault. D.H. was not present for the incident because S.T.N. left him with one of her friends. D.H. was again returned to foster care.

Beginning with Blue Earth County's filing of the CHIPS petition, the county provided S.T.N. with services, or gave her the opportunity to take advantage of services, including assistance in obtaining housing, chemical-dependency treatment, and parenting assistance. After a psychological evaluation, S.T.N. was diagnosed with intermittent explosive personality disorder and antisocial personality disorder. The county provided her with opportunities for mental-health care, including appointments with a psychiatrist, medication management, and therapy sessions. As a result of the county's efforts, S.T.N. did make some improvements, specifically in obtaining and maintaining housing and in becoming more open to counseling for her mental-health and chemical-dependency issues.

After the trial home visit ended in November 2009, the county proceeded with its petition to terminate parental rights. Following trial, the district court issued an order terminating S.T.N.'s parental rights. The court concluded that (1) S.T.N. "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon the parent by the parent-child relationship by failing to provide for the child's needs"; (2) S.T.N. is palpably unfit to parent D.H. due to a "consistent pattern of specific conduct . . . or specific conditions directly relating to the parent-and-child relationship which are of a duration or nature that renders [S.T.N.] unable, for the reasonably foreseeable future," to care for D.H. appropriately; (3) reasonable efforts by Blue Earth County failed to correct the conditions causing D.H.'s placement; (4) D.H. is neglected

and in foster care; (5) termination of parental rights is in the best interests of the child; and (6) reasonable efforts were made to reunite S.T.N. and D.H.

This appeal followed.

D E C I S I O N

The district court may terminate parental rights if at least one of the grounds in Minn. Stat. § 260C.301, subd. 1(b) (2008), 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. Minn. Stat. § 260C.301, subds. 1(b), 7, 8; *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); *see In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004).

This court reviews TPR decisions 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." *S.E.P.*, 744 N.W.2d at 385. We "closely inquire into the sufficiency of the evidence to determine whether [the evidence] was clear and convincing," but "[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 J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). A finding is clearly erroneous when it is "manifestly contrary to the weight of the evidence or 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) (quotations omitted).

In this case, the district court found that termination of S.T.N.'s parental rights was justified because four of the grounds in Minn. Stat. § 260C.301, subd. 1(b), were supported by clear and convincing evidence; that termination is in the best interests of the child; and that the county made reasonable efforts to reunite the family. Although all grounds upon which the district court relied are supported by clear and convincing evidence, the court's conclusion that S.T.N. is palpably unfit for the parent-child relationship is particularly compelling, as discussed below, and thus we need not address the remaining grounds.

Palpably Unfit

S.T.N. challenges the district court's conclusion that she is a palpably unfit parent. The district court 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 "a consistent pattern of specific conduct before the child" or "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 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 661.

S.T.N. claims that, without expert medical evidence in the record stating that her mental-health issues have resulted in a consistent pattern of specific deleterious conduct or conditions, the court cannot conclude that she is palpably unfit as a parent.

Referencing *In re Welfare of Chosa*, S.T.N. argues it must be shown that her mental-health condition will continue for a prolonged, indeterminate period. 290 N.W.2d 766, 769 (Minn. 1980). This assertion is misleading because S.T.N. appears to argue the court can only consider whether her mental-health condition will continue. She also claims the court can only make such a finding with expert medical testimony regarding her conditions. *Chosa*, however, is distinguishable from this case because it did not involve a parent with mental-health issues, but rather an extremely young, chemically dependent mother. Furthermore, *Chosa* held that a condition that necessitated the TPR, not just a mental-health condition, must continue to exist at the time of the hearing and it must appear to "continue for a prolonged, indeterminate period." *Id.*

Here, the district court was not required to limit its analysis to S.T.N.'s mental-health condition, as S.T.N. implies. It was also free to consider the other conditions that served as a basis for the TPR, such as S.T.N.'s chemical dependency, erratic behavior, emotional outbursts, frequent arrests, numerous bouts in jail, and D.H.'s exposure to S.T.N.'s chaotic and unstable lifestyle. S.T.N. does not provide any authority to support her assertion that only medical testimony regarding her mental-health condition will suffice to support a TPR. Expert medical evidence is not always essential for the termination of parental rights. For example, in *J.M.*, the supreme court concluded that termination was justified because the mother had failed to comply with a portion of her case plan; "she was palpably unfit to parent because of her chemical dependency and mental illness"; and her children were neglected and in foster care. 574 N.W.2d at 720, 724. The supreme court held that clear and convincing evidence supported the district

court's decision to terminate parental rights because the district court heard extensive testimony by the child-protection worker and guardian ad litem (GAL) that termination was in the best interests of each child and that the county had made "every reasonable effort to assist" the mother to rehabilitate herself as a parent and to reunite this family. *Id*.

The district court in this case held S.T.N. failed to comply with portions of her case plan; she "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship by failing to provide for D.H.'s needs"; she was palpably unfit to parent because of her chemical dependency and mental illness; and D.H. was neglected and in foster care. The court supported its conclusions with detailed factual findings and testimony from two of S.T.N.'s caseworkers, the GAL, S.T.N.'s probation officer, her therapist, a psychologist, D.H.'s therapist, and D.H.'s foster father. Furthermore, the parenting assessment performed by psychologists Barbara Carlson and Dr. Linda Marshall concluded that for D.H.'s best interests, S.T.N. "needed to provide a safe, secure nurturing environment in which [D.H.] could thrive and become a well-rounded, emotionally secure adolescent and adult. At this time it appears [S.T.N.] has not been able to provide that environment in the past, and her ability to do so in the future is questionable."

It is clear that the conditions leading to the TPR will not be corrected within a reasonably foreseeable time. S.T.N. did not complete the goals outlined in her case plan, as she failed to maintain sobriety; did not control her behavior when angry; did not stay out of jail; failed to attend play therapy with D.H.; and continued associating with people

with violent criminal pasts. "Failure to cooperate with the rehabilitation plan supports the conclusion that the present conditions will continue for a prolonged, indeterminate period." *In re Welfare of J.S.*, 470 N.W.2d 697, 703 (Minn. App. 1991). In its findings of fact, the court stated, "Neither probationary conditions, nor reunification case plans, nor trial home visit agreements, have been successful in modifying [S.T.N.'s] behavior for any significant period of time." It went on to conclude that S.T.N. does not appear "willing or able to significantly modify her behavior" for reunification to be successful.

The district court's termination of parental rights under Minn. Stat. § 260C.301 is supported by clear and convincing evidence, and the district court's findings are not clearly erroneous.

Reasonable Efforts

Appellant also challenges the district court's conclusion that the county provided reasonable efforts to reunite her with D.H. 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" are 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) (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. A parent's minimal improvement is not enough to overcome the conclusion that the parent's past problems make his "future performance as a parent uncertain." *See In re Welfare of Maas*, 355 N.W.2d 480, 483 (Minn. App. 1984).

The district court concluded that the county used reasonable efforts to reunify S.T.N. and D.H. but that S.T.N. failed to make any significant or lasting changes. S.T.N. claims the county did not make reasonable efforts to rehabilitate her, specifically that "little to no efforts were made" to help her with mental-health issues. She states that the county's reasonable efforts to address her mental-health problems consisted of two medical diagnoses and two medical appointments. The record shows otherwise. Barbara Carlson conducted a psychological evaluation and parenting assessment of S.T.N. over three days. S.T.N. also had one appointment with Dr. Linda Marshall for a psychological update. In a four-month period, she met with a psychiatrist, Dr. Farnsworth, three times, but missed her fourth appointment. Dr. Farnsworth prescribed mood-stabilizing medication for S.T.N. S.T.N. saw Sherri Mielke four times for therapy sessions during the same four-month time period.

Although S.T.N.'s mental health was one reason for the CHIPS petition, S.T.N. fails to acknowledge other issues that led to D.H.'s foster-care placement. The record

shows the county provided a number of services to assist her in rectifying these issues. For example, when S.T.N. was homeless, the county paid for her to stay at a motel because no landlords would rent to her with her poor rental history. Her caseworker then helped S.T.N. obtain a subsidized apartment through a special county program. The caseworker also helped S.T.N. enter outpatient treatment for her chemical-dependency issues.

The record includes the TPR petition submitted by one of S.T.N.'s case managers outlining the services the county provided. These services include chemical-dependency treatment, psychiatric care, individual therapy, case management, medication management, play therapy for D.H., foster care, assistance obtaining housing through the Shelter Plus Care housing program, and transportation services. The district court also heard testimony from the GAL, psychologist Barbara Carlson, counselor Sherri Mielke, and two caseworkers regarding the numerous services the county provided S.T.N. One case manager, who had to transfer S.T.N.'s case to another county worker because of its prolonged nature and intensity, testified at trial that the services provided to S.T.N. were extensive, stating, "I think we have worked very hard in trying to reunite [D.H.] with his mother. Probably harder than we have in . . . many other cases."

The record also includes the GAL's final report to the court, where she recommended on February 3, 2010, the termination of S.T.N.'s parental rights. The GAL noted that, although S.T.N. did comply with some of her case plan, such as maintaining housing, attending outpatient treatment, and attending individual therapy, she has not shown significant progress since the CHIPS petition was filed despite the efforts of the

county. She stated that S.T.N. did not maintain sobriety, control her behavior when angry, stay out of jail, or attend play therapy with D.H., all of which her case plan required. The GAL concluded that S.T.N. has not been able to keep D.H. in her home without either being overwhelmed or getting arrested.

Thus, S.T.N. was offered many services, but they proved to be futile because S.T.N., although participating in some of the offered services, failed to make any lasting corrective changes. The evidence supports the district court's findings and conclusion that the county offered services to reunify S.T.N. and D.H.

Best Interests

Finally, S.T.N. challenges the district court's conclusion that termination is in the child'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 requires the district court to balance the child's interest in preserving his relationship with his parent, the parent's interest in preserving his relationship with his child, and any competing interests 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.

"[D]etermination of a child's best interests 'is generally not susceptible to an appellate court's global review of a record,' and . . . an appellate court's combing through the record to determine best interests is inappropriate because it involves

credibility determinations.'" *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

S.T.N. claims there is no evidence to support the district court's finding that D.H. will suffer permanent emotional damage and must be allowed to heal from damage already inflicted. D.H.'s therapist Heather Frantum-Mathes testified about her observations of D.H. and her concern for his long-term emotional health if he were returned to his mother. S.T.N. argues this testimony is insufficient for the court to conclude D.H. will suffer permanent emotional damage and that, absent expert medical testimony, the court cannot make such a finding. S.T.N. offers no authority for this proposition. Two letters from Frantum-Mathes were submitted as trial exhibits. In the first letter she states, "D.H. cannot handle much more, if any, of the instability that occurs in his life . . . " and "there will already be long term damage and repercussions for him, however should his life continue on this path the damages will be even more significant and severe." The second letter describes D.H.'s problematic behavior during therapy sessions, most of which mimicked S.T.N.'s violent and aggressive actions that D.H. witnessed while in her care. Frantum-Mathes noted that D.H.'s behavior worsened and became more severe following his return after trial home visits. And she stated, "The ongoing instability in [D.H.]'s life continues to be detrimental to his emotional development." The court also heard extensive testimony from two caseworkers, the GAL, the psychologist who conducted the psychological evaluation and parenting assessment, and D.H.'s foster father, all of whom testified about their concern for D.H.'s well-being, both presently and in the future, if he does not have a stable environment.

S.T.N. argues the district court's conclusion that her interest in preserving the parent-child relationship is fleeting is unsupported by evidence in the record. S.T.N. was given many chances to regain custody of D.H. In his short life, D.H. has been removed from S.T.N.'s care nine times. Excluding his final removal, D.H. was returned to S.T.N.'s custody after each incident, in an attempt to reunite S.T.N. and D.H. Most notable are the final two trial home visits in July and November 2009. Both were short-lived and ended upon S.T.N.'s resuming her chaotic and violent lifestyle, which produced emotional outbursts, police involvement, and arrest. The GAL testified that, preceding these home visits, S.T.N. made some progress on her case plan, but once the home visits began, things quickly deteriorated. A caseworker testified that S.T.N. "can hold it together for a period of time," but that she ultimately reverts to her old ways. Explaining her reasons for recommending termination of S.T.N.'s parental rights, psychologist Barbara Carlson testified, "When a child has been removed from the home nine times and the same problems are still occurring, it does not demonstrate progress on the part of the parent to acquire skills, to acquire techniques . . . and whatever is necessary to try to remedy the situation and provide a better environment."

Lastly, S.T.N. contends there is no evidence that an adoptive home is available to D.H. to provide him with a stable home and future. D.H.'s current foster family is not seeking adoption, so another family will need to adopt him permanently. However, prior caselaw has recognized that "[t]he termination statute contains no provision requiring a juvenile court to assess the likelihood that a child will be adopted as part of its analysis of

the child's best interests." *J.M.*, 574 N.W.2d at 723. Therefore, S.T.N.'s argument is without merit.

In its best-interests analysis, the court balanced the three factors stated in *R.T.B.* and based its findings and conclusions on substantial evidence, including extensive testimony from professionals involved in the case, all of whom recommended termination of parental rights. The record supports the district court's findings and conclusion that it is in the child's best interests to terminate S.T.N.'s parental rights.

Affirmed.