STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1638

In the Matter of the Welfare of the Children of:
M. J. L., Parent

Filed February 24, 2014
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-JV-13-634

William Ward, Hennepin County Public Defender, Peter W. Gorman, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

ROSS, Judge

The district court terminated M.J.L.'s parental rights to her infant son after the state unsuccessfully attempted to address M.J.L.'s parenting deficiencies that were

apparent to the state even before the child was born in June 2012. Because the district court did not abuse its discretion by adopting the department of human services' findings of fact almost verbatim, by finding that M.J.L. is palpably unfit to parent, or by considering the child's adoptability, we affirm.

FACTS

M.J.L. has struggled with schizo-affective disorder since at least 2007. Her illness presents itself through a number of parent-inhibiting symptoms, including delusions, disorganized behavior and language, lack of focus, the inability to track conversations, suspiciousness, guardedness, and paranoia. She was civilly committed almost continually from June 2007 until December 2009 because of danger arising from her mental illness. The commitment was stayed for a period in August 2008 until M.J.L. was admitted for treatment at the Hennepin County Medical Center in October. M.J.L. there underwent neuropsychological testing that revealed that she will likely need "substantial assistance" in life and that she would not be able to live independently.

M.J.L. was again civilly committed on March 1, 2011 at least in part at Como Intensive Residential Treatment Services. M.J.L.'s case manager referred her to the Assertive Community Treatment team in June under the care of Dr. David Mair. In July M.J.L. was provisionally discharged from Como. She rarely reported to Assertive after her discharge. Assertive, concerned for M.J.L.'s safety, sought to revoke the discharge. M.J.L. was eventually found on the street on November 14. She was pregnant, homeless, off her medication, and unable to care for herself. Her commitment was extended to

August 2012. Officials placed her in the Anoka Metro Regional Treatment Facility, where she remained until April 2012.

In addition to suffering mental illness, M.J.L. was chemically dependent. She admitted to altering prescriptions and searching for drugs on the streets. She was sent to Anoka Care, a secured facility, for treatment. The staff there administered M.J.L.'s daily medications, and M.J.L.'s symptoms diminished.

M.J.L. attempted to continue her chemical-dependency treatment at Incarnation Wayside, an extended-care program for chemically dependent patients. But staff ordered her to leave after only two weeks because M.J.L. would laugh to herself, urinate inside the facility, and otherwise behave in manners that made other patients feel unsafe. She transferred to Carlson Drake, an intensive residential mental-health treatment facility. The facility did not allow children, so case workers told M.J.L. that she would have to seek other options in anticipation of her child's birth. She failed to do so.

M.J.L. gave birth to a son, S.J.J.L., in June 2012. Medical workers were concerned. They saw that M.J.L. did not properly care for S.J.J.L., leaving him alone in the room and preferring that staff, rather than she, care for him.

The district court ordered S.J.J.L. into foster placement. Patricia Bearden was assigned as the child-protection worker. The district court offered M.J.L. preliminary services through a voluntary case plan to correct the conditions leading to S.J.J.L.'s foster-care placement. Among others, the services included a chemical-dependency assessment, a parenting assessment, a referral for mental-health services, and case-management services. Bearden and M.J.L. met a few times and updated the voluntary

case plan. The plan required M.J.L. to undergo a parenting assessment and comply with the recommendations of the assessor (which eventually included individual therapy), to cooperate with her mental-health team, to find safe and suitable housing, to submit to urinalysis, to sign releases for referrals, and to communicate with the department of human services and her social worker. These voluntary conditions became mandatory after a September 2012 proceeding that determined that S.J.J.L. was a child in need of protection or services.

The plan allowed M.J.L. to visit with S.J.J.L. under supervision. M.J.L.'s lack of parenting skills required that these visits include a high level of supervision. Counselors were concerned about S.J.J.L.'s safety due to M.J.L.'s inability to properly hold him, feed him, buckle his car seat, change his diapers, and perform other basic parenting tasks. Counselors tried to teach M.J.L. these skills, but she did not appear to retain the information. The district court suspended visits in October.

M.J.L.'s delusions returned, and so did other symptoms of her schizo-affective disorder. She became homeless. In October 2012 Assertive petitioned to activate her civil commitment. The district court granted the petition but apparently stayed it. The commitment was set to expire in October 2013.

In November 2012 M.J.L. enrolled in Eyes on Meds, a program designed to help patients comply with medication schedules. An administrator would meet with M.J.L. six days a week to ensure that she took her medications. M.J.L. generally cooperated, and the medication again suppressed her symptoms. She obtained an apartment in December 2012 and found a professional representative payee to manage her finances. That same

month, she was accepted into a FamilyWise program that attempts to teach parenting skills through one-on-one counseling, classroom training, and a parent-coaching component in which the parent and child interact with a parenting coach present. Her performance in each of these three components was poor.

M.J.L. initially attended but would act strangely during the classroom portion. She laughed at inappropriate times and paid little attention. Although she attended 22 of 28 class sessions from January 23 to June 12, she frequently arrived late or left early. In May and June, she left early about half the time, and her absences became more frequent. She remained inattentive and failed to do homework. M.J.L. showed inconsistent insight about her mental illness, the likely contributor to her poor classroom performance.

M.J.L.'s parent-coaching through FamilyWise began in February 2013 under coach Emily Glasgow, occurring twice weekly. M.J.L. attended about 90% of the time, but she did not show consistent progress. Glasgow remained concerned about M.J.L.'s parenting abilities and, during the eventual termination proceeding, testified that she would not leave M.J.L.'s son alone with her. Glasgow concluded that M.J.L. had difficulty feeding S.J.J.L. and remembering basic but essential facts, like the last time S.J.J.L. had eaten.

M.J.L.'s one-on-one counseling attendance was inconsistent. She attended only five of thirteen sessions. And two of those sessions ended early. She also could not complete even the first of the five requirements of this segment of the program. She had difficulty realizing her son's limitations and lacked insight about her own. Her repeated absences resulted in her being removed from this segment of the program.

County officials permitted M.J.L. to resume supervised visits in January 2013. She continued struggling with basic parenting. She could not follow directions from the foster parents or remember S.J.J.L.'s specific needs. She also had difficulty learning how to buckle and unbuckle a car seat and how to diaper.

The department of human services petitioned the district court in January 2013 to terminate M.J.L.'s parental rights. It alleged that M.J.L. is palpably unfit to parent and that reasonable efforts to correct the conditions leading to S.J.J.L.'s out-of-home placement had failed.

The termination hearing occurred in June. The district court heard from seven witnesses: M.J.L.'s psychiatrist and advocate, Dr. David Mair; a mental health professional in charge of M.J.L.'s case at Assertive, Katy Molinare; a care provider at Assertive, Leah Hamilton; a classroom instructor from FamilyWise, Allison Petschl; M.J.L.'s one-on-one parenting coach and phase-work coach, Emily Glasgow; the caseworker, Patricia Bearden; and S.J.J.L.'s guardian ad litem, Krystle White. Each of these witnesses offered testimony tending to support the termination of M.J.L.'s parental rights. The county also presented the district court with various reports about M.J.L.'s fitness to parent. M.J.L. offered no competing testimonial or documentary evidence.

The witnesses and exhibits provided substantially the facts just described. Many of the witnesses recognized that M.J.L. had been showing improvement but believed that she still was not ready to care for the child and would likely be unable to do so for the foreseeable future. Some of the witnesses told the court that M.J.L.'s schizo-affective symptoms had increased in the two months preceding the termination hearing.

At the end of the proceeding, the district court invited both parties to submit proposed findings. The department offered proposed findings, but M.J.L. did not. The district court terminated M.J.L.'s parental rights, adopting almost verbatim the department's proposed findings. It found that M.J.L. is palpably unfit to parent and that reasonable efforts had failed to correct the conditions leading to out-of-home placement. It also found that termination is in the best interests of S.J.J.L.

M.J.L. appeals.

D E C I S I O N

M.J.L. argues that we should reverse the termination order because the district court adopted the department's proposed factual findings verbatim, there was insufficient evidence to support the termination of her parental rights, and the district court inappropriately considered evidence of S.J.J.L.'s adoptability in making its decision. None of these arguments persuades us to reverse.

I

We will not reverse based on M.J.L.'s contention that the district court erred by adopting the department's proposed findings almost verbatim. Although the supreme court has discouraged district courts from adopting a party's proposed findings entirely, it has also recognized that district courts are sometimes under great time pressure to give the parties an answer, particularly in termination cases. *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005). The practice might indicate that the district court has not given the case independent consideration, *Pederson v. State*, 649 N.W.2d 161, 163–64 (Minn. 2002), but we will not reverse solely because of it, *Dukes v. State*, 621 N.W.2d

246, 258–59 (Minn. 2001). We address the concern by applying greater care in our review to ensure that the district court's findings are not clearly erroneous. *Id.* at 259.

M.J.L. fails to support her argument that the district court could not have independently reviewed the record, providing no evidence or caselaw to elevate the concern above speculation. This is certainly not a case like *Pederson*, where the supreme court reversed in part because the district court allowed only one party to submit proposed findings of fact. 649 N.W.2d at 164. Not only did the district court here invite proposals from both sides, M.J.L. ignored the opportunity. This gives us less reason for concern, but we have reviewed the record with special care nonetheless, mindful that the district court chose the disfavored approach.

II

We also are not persuaded by M.J.L.'s contention that the district court's decision to terminate her parental rights is not supported by sufficient evidence. On review, we look to whether the district court's findings address appropriate statutory criteria and whether they are clearly erroneous. *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012). Before terminating parental rights, the district court must find by clear and convincing evidence that one of the statutory criteria for terminating rights is present and that the best interests of the child indicate that parental rights should be terminated. *See* Minn. Stat. § 260C.317, subd. 1 (2012); *In re Welfare of Children of K.S.F.*, 823 N.W.2d at 665. To determine whether a finding is clearly erroneous under the clear-and-convincing-evidence standard, we consider whether the finding 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 K.S.F.*, 823 N.W.2d at 665 (quotation omitted). We give great deference to the district court's overall decision to terminate rights, *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008), and we affirm its decision so long as at least one statutory ground for terminating rights is supported by sufficient evidence and that termination is in the best interests of the child, *In re Children of T.R.*, 750 N.W.2d 656, 662 (Minn. 2008).

The district court found that M.J.L.'s rights should be terminated due to her failure to comply with two statutory criteria: that M.J.L. was palpably unfit to be a part of the parent-child relationship and that, despite the department of human services' reasonable efforts, she failed to correct conditions leading to S.J.J.L.'s out-of-home placement.

Palpable Unfitness

The district court had a sufficient evidentiary basis to conclude that M.J.L. is palpably unfit to parent. A parent is palpably unfit if she is unable to "care appropriately for the ongoing physical, mental, [and] emotional needs of the child" in the "reasonably foreseeable future." Minn. Stat. § 260C.301, subd. 1(b)(4) (2012). A district court may deem a parent palpably unfit only if clear and convincing evidence supports its finding of a "consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Children of T.R.*, 750 N.W.2d at 662 (quotation omitted).

M.J.L. maintains that the district court erred by finding her unfit because it based its finding on her mental illness and because it did not find that the conditions making her

palpably unfit existed at the time of the hearing. The argument is not convincing. It is true that mental illness alone cannot justify a decision to terminate parental rights. *Id.* at 661. But the district court cannot turn a blind eye to the potentially dangerous effects of a parent's mental illness. If mental illness affects a parent's ability to properly care for a child, it can indeed support termination. *Id.* at 661–62; *see In re Welfare of Kidd*, 261 N.W.2d 833, 836 (Minn. 1978) (holding a parent palpably unfit although her "inability to recognize the needs and limitations of the infant, her ineptness with regard to the mechanical functions of a parent, and her bizarre and potentially dangerous conduct" arose from her mental illness). The evidence alerted the district court to the detrimental effects of M.J.L.'s illness on her ability to parent, and we are satisfied from the district court's stated rationale that it maintained the proper focus on those effects.

M.J.L. also contends that the district court improperly focused on her circumstances as they existed before the termination hearing. The temporal focus of a palpable unfitness inquiry is the present and the projected future. *In re Welfare of J.W.*, 807 N.W.2d 441, 446 (Minn. App. 2011). The past, however, may inform the district court's projections. *See In re Welfare of S.Z.*, 547 N.W.2d 886, 894 (Minn. 1996) (holding that a long history of actions stemming from mental illness may be an indication that a person lacks the present and future ability to care for a child); *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 710 (Minn. App. 2004) (relying on past relapses and history of substance abuse to support a finding of failure to rebut a presumption of palpable unfitness). Although the district court detailed M.J.L.'s history with schizo-affective disorder, it focused on recent and current conditions. M.J.L.'s improvement

since beginning the Eyes on Meds program has been inconsistent, and major, reasonable safety concerns remain. Various witnesses explained reasons that M.J.L. could not, at the time of the hearing, appropriately manage her own day-to-day needs, much less those of S.J.J.L., whose life and health would depend on M.J.L.'s constant good judgment and action. According to witnesses, M.J.L. continued to be a vulnerable adult with mental-illness symptoms persisting at the time of the termination proceeding. The evidence supported the witnesses' opinions that this would remain so for the foreseeable future. M.J.L. offered no evidence to support, let alone compel, a different conclusion.

Correcting the Conditions Leading to Placement

Given our conclusion that at least one statutory factor supports the district court's termination decision, we do not address M.J.L.'s challenge to the second statutory factor.

III

M.J.L. argues that the district court erred by considering evidence of S.J.J.L.'s adoptability in its best-interests analysis. In determining whether to terminate parental rights, the paramount consideration is the best interests of the child. Minn. Stat. § 260C.301, subd. 7. One goal in terminating parental rights is to facilitate adoption. *In re Welfare of P.J.K*, 369 N.W.2d 286, 292 (Minn. 1985). And the stability of the child is an important factor in the best-interests determination. *In re Welfare of K.T.*, 327 N.W.2d 13, 18 (Minn. 1982). This is true even when stability will come only by way of adoption. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 399 (Minn. 1996) (affirming the district court's consideration of the stability of the child with her pre-adoptive parents in its best-interest determination); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986)

(holding that the best interests of the child supported terminating parental rights so the child could be placed for adoption).

M.J.L. relies on two cases to support her position that S.J.J.L.'s adoptability is irrelevant. She asserts that *In re Welfare of J.M.*, 574 N.W.2d 717 (Minn. 1998), and *In re Welfare of P.J.K.*, 369 N.W.2d 286, hold that "a child's adoptability is not properly a part of the best-interests determination in a termination-of-parental-rights proceeding." Neither case supports the proposition. In *J.M.*, the supreme court affirmed this court's determination that the district court did not err by *not considering* the child's adoptability. 574 N.W.2d at 722–24. It held that the "termination statute does not *require* assessment of a child's adoptability" and that the district court did not err by *not* considering adoptability. *Id.* at 724 (emphasis added). And in *P.J.K.*, the supreme court similarly reversed this court's decision that appeared to require that a district court find that there is an immediate possibility of adoption before terminating parental rights. 369 N.W.2d at 292. These cases explain only that the district court is not required to consider adoptability.

The district court did not abuse its discretion by considering S.J.J.L.'s adoptability as it bears on stability, a proper consideration when determining the child's best interests.

Affirmed.