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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2134

In the Matter of the Welfare of the Children of: A. N. T. and J. W. L., Parents

Filed April 14, 2014
Reversed and remanded
Klaphake, Judge[*]

Olmsted County District Court
File No. 55-JV-13-5302

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Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellant challenges the termination of her parental rights to her children, L.W.L. and C.J.L. Appellant argues that the district court's order does not address the necessary statutory criteria to terminate her parental rights, and its findings are not supported by

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

substantial evidence. Because the district court does not explain its rationale for concluding that termination of appellant's parental rights is in the best interests of the children, we have no way to evaluate whether the district court's best interest finding is supported by the evidence. We therefore reverse and remand for adequate best interests findings.

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). A district court's decision in a termination proceeding must be based on evidence concerning the conditions that exist at the time of trial. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). An appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). On appeal we examine the record to determine whether the district court applied the appropriate statutory criteria and made findings that are not clearly erroneous. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 249 (Minn. App. 2003). A finding is clearly erroneous when "it is either 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) (quotation omitted). We give the district court's decision considerable deference, but "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

I.

Appellant argues that the district court's "termination order . . . does not address the statutory criteria that is required to terminate [her] parental rights under Minn. Stat. [§] 260C.301, subd. 1(b)(5) [(2012)]." Under subdivision 1(b)(5), the district court may terminate parental rights 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).

Appellant argues that the district court's findings are deficient because the district court "never states what condition(s) led to the children's placement." While it is true that the district court findings do not explicitly state the conditions that led to the children's out of home placement, the findings incorporate exhibits that contain the out of home placement plans signed by appellant. The placement plans clearly state the conditions leading to the out of home placement: the children were at risk of harm from (1) being left in the care of strangers or other unsafe individuals, (2) appellant's and other caregivers' chemical use, (3) appellant's failure to provide her children appropriate educational and medical services, and (4) appellant's failure to manage her mental and physical health and the resulting neglect of her children's needs. From the record, it does not appear that appellant disputed the conditions listed in the out of home placement plans. In fact, appellant agreed during the CHIPS case that "the children were without necessary food, clothing, shelter, education" because of appellant's "inability to manage her chemical use, mental health issues and physical health issues."

Appellant also argues that "the [district] court's findings never find, nor even mention, the statutory presumption contained in Minn. Stat. [§] 260C.301, subd. 1(b)(5)." Appellant further argues that because the district court did not rely on the statutory presumption, "there are a number of inferences that can be made in [her] favor," including that "efforts made by social services have not failed to correct the conditions leading to the children's placement; that [she] substantially complied with her case plan; that [she] does not abuse chemicals." But appellant offers no authority for her assertion that because the district court did not rely on a statutory presumption, the absence of that presumption creates an "inference" in her favor. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

In sum, the district court's order adequately addressed the necessary criteria under Minn. Stat. § 260C.301, subd. 1(b)(5).

II.

Appellant argues that the district court's determination that her parental rights should be terminated pursuant to Minn. Stat. § 260C.301, subd. 1(b)(5) is not sufficiently supported.

Under subdivision 1(b)(5), the district court must find that (1) "following the child's placement out of the home," (2) "reasonable efforts, under the direction of the court," (3) "have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5).

It is undisputed that the children were placed out of the home. The out of home placement plans show that one of the conditions leading to the children's placement included that the children "are at risk of emotional, developmental & physical harm when [appellant] does not manage her mental & physical health and she is unable to provide for the children's needs." Appellant's social workers testified that appellant was offered services to address her health issues and her ability to provide for her children, including social security disability benefits, the Bridges Program, the Family Stabilization Program, and MFIP benefits. But appellant failed to take advantage of offered financial and health services. This resulted in repeated trips to the emergency room, missed visits with her children, the loss of electricity, and then the loss of her apartment—all consequences related to the conditions that led to the out of home placement. On this record, we observe no error.

III.

Appellant argues that the district court's determination that it would be in the minor children's best interests to terminate her parental rights is not supported. The district court is required to make findings under Minnesota Rule of Juvenile Protection Procedure 39.05. Rule 39.05 states:

> Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:
>
> (i) the child's interests in preserving the parent-child relationship;
> (ii) the parent's interests in preserving the parent-child relationship; and
> (iii) any competing interests of the child.

Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). "Considering a child's best interests is particularly important in a TPR proceeding because a child's best interests may preclude terminating parental rights even when a statutory basis for termination exists." *In re Welfare of the Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) (quotation omitted). In a TPR proceeding, the district court must consider the child's best interests and explain why termination is in the best interests of the child. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). "[A] district court's findings in support of any TPR order *must* address the best-interests criterion." *D.L.D.*, 771 N.W.2d at 546 (emphasis added).

The district court's order in this case mentions "best interests" twice. The first is in the district court penultimate finding of fact: "Based upon all of the foregoing, this [c]ourt finds that it is in [L.W.L] and [C.J.L.'s] best interests that [appellant's] parental rights be terminated and that they be placed for adoption." The second is in the first conclusion of law: "The best interests of the children are the paramount consideration in this termination of parental rights proceeding and the [p]etitioner has proven by clear and convincing evidence that it is in the children's best interests that the parental rights of [appellant] should be terminated."

The district court order does not include any analysis under rule 39.05. Simply mentioning "best interests" twice is insufficient. We have no way to evaluate whether or not the record supports the district court's best interests evaluation when the district court provides only conclusory statements that termination is in the children's best interests.

We therefore reverse and remand for the district court to conduct the required analysis under Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). *See D.L.D.*, 771 N.W.2d at 547 ("[B]ecause appellate review of the ultimate decision to terminate parental rights is not possible given the district court's failure to make findings on the child's best interests, we remand for best-interests findings."); *Tanghe*, 672 N.W.2d at 626 (holding that the district court "must consider a child's best interests and explain its rationale in its findings and conclusions," and explaining that "when the findings do not adequately address best interests, they are inadequate to facilitate effective appellate review, to provide insight into which facts or opinions were most persuasive of the ultimate decision, or to demonstrate the court's comprehensive consideration of the statutory criteria" (quotation omitted)).

Reversed and remanded.