STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2146

In the Matter of the Welfare of the Children of: T. L. W., H. M. M.,
D. F. M., A. P. and J. L. S., Parents

Filed May 5, 2014
Affirmed
Connolly, Judge

Carver County District Court
File Nos. 10-JV-13-160, 10-JV-12-22, 10-JV-12-397, 10-JV-12-398

Jody Winters, Gavin, Winters, Twiss, Thiemann & Long, Ltd., Glencoe, Minnesota (for appellant T.L.W.)

Joan Lorraine Miller, Shakopee, Minnesota (for appellant J.L.S.)

Mark Metz, Carver County Attorney, Kevin G. Cedergren, Assistant County Attorney, Chaska, Minnesota (for respondent Carver County Community Social Services)

Thomas J. Nolan, Jr., Nolan Law Offices, Minneapolis, Minnesota (for guardian ad litem Diane Schafer)

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Randall, Judge.[*]

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

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

CONNOLLY, Judge

Appellant challenges the termination of parental rights (TPR) to her two youngest children. Because the district court did not abuse its discretion in finding that (1) appellant is palpably unfit to be a party to the parent-child relationship, (2) respondent county's reasonable efforts to correct the conditions leading to the children's out-of-home placement have failed, (3) appellant's oldest child experienced egregious harm while in appellant's care and it would not be in any child's best interests to be in appellant's care, (4) the children are neglected and in foster care, and (5) permanent adoption is in the children's best interests, we affirm.

FACTS

Appellant T.W. is the mother of four children: A.L.M. (12), A.R.M. (11), A.J.D. (5), and J.A.S. (4). The fathers of A.L.M. and A.R.M. are brothers, and those two children have been in the permanent legal and physical custody of D.M., the father of A.R.M. and the uncle of A.L.M., since November 2012.[1]

The four children were taken into protective custody and placed in foster care in January 2012. Except for an unsuccessful home visit from May to August 2012, they have been out of appellant's home since that time.

In September 2012, respondent Carver County Community Social Services (CCCSS) filed a permanency petition seeking to terminate appellant's parental rights to A.J.D. and J.A.S. That petition was amended in November 2012 to seek a transfer of

[1] Appellant does not challenge the transfer of permanent custody of A.L.M. and A.R.M.

their legal and physical custody to a relative in Illinois, subject to the approval of the Interstate Compact for Placement of Children. Because approval was denied, the permanency petition was renewed in April 2013.

Following a lengthy hearing that involved the testimony of 24 witnesses and the admission into evidence of 268 exhibits, the district court in October 2013 terminated appellant's parental rights to J.A.S. and A.J.D., based on its findings that (1) appellant was palpably unfit to be party to the parent-child relationship, (2) CCCSS's reasonable efforts to reunify appellant and the children and to correct the conditions leading to the out-of-home placement have failed; (3) another child (A.L.M.) experienced egregious harm in appellant's care, indicating that it would not be in any child's best interests to be in her care; (4) the children are neglected and in foster care; and (5) it would be in the children's best interests to be placed permanently in an adoptive home.[2]

Appellant challenges these findings.

D E C I S I O N

"[I]n terminating parental rights the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), (citing Minn. Stat. § 260C.301, subd. 7 (2010)), *review denied* (Minn. Jan. 6, 2012). Clear-and-convincing evidence is required to support a termination decision. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). "We

[2] The father of A.J.D. and J.A.S. are not involved in this appeal.

review a district court's ultimate determination that termination is in a child's best interest for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 905.

The district court's determination that termination was in appellant's children's best interests was based on five provisions of Minn. Stat. § 260C.301 (2012): subd. 1(b)(4) (appellant's palpable unfitness to be a party to the parent-child relationship); subd. 1(b)(5) (failure of CCCSS's reasonable efforts to correct the conditions leading to the children's out-of-home placement); subd. 1(b)(6) (appellant's causing egregious harm to A.L.M.); subd. 1(b)(8) (children being neglected and in foster care); and subd. 7 (TPR is in the best interests of the children).

1. Palpable unfitness

Parental rights may be terminated of a person who is

> palpably unfit to be a party to the parent and child relationship because of a consistent pattern of conduct before the child of or specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). CCCSS's attorney testified that the 2003 Children in Need of Protection and Services (CHIPS) petition said appellant "reported that [the father of A.L.M.] had strangled her and she had stabbed him . . . [and] that two weeks before . . . [he] had thrown a gun and hit [A.L.M., then one year old] in the head, leaving a bruise" and that a 2008 assessment was done because appellant "had filed a police report stating she had been strangled by [the father of A.J.D.] and it was witnessed by her

six-year-old daughter, [A.L.M.]." A social worker who worked with appellant's family testified that appellant spoke of "the father of the first child, indicating that he was a rapist and a drug addict. The father of the second child was an abuser, a wife beater. . . . The father of the third child was a murderer . . . he had been in prison for attempting to murder somebody." The social worker also testified that

> the safety issues had presented themselves. When we would go into the home there would be frequently lots of men in the home. That in and of itself wasn't problematic, but what was problematic when we paired that with what [appellant] was sharing with us about her prior decisions of bringing men in her life . . . she had reported that [A.L.M.] or [A.J.D.] had possibly been sexually abused by one of her partners-slash-friends . . . .

D.M., who was granted custody of the two older children, testified that

> [appellant] kept an unsafe environment. She kept a house full of gang members. . . . [S]he had a set of boys in her house that none of another group of boys didn't like. In the midst of that, her house got shot in and she had got shot with the kids being in the house. And the kids remember that to this day. After that had happened, she still had the same group of boys back in her house that had shot in the house. The kids, they seen fights. They tell about these incidents that had happened, seeing fights, boys and girls fighting in the house while intoxicated.

Another social worker testified that, although there was a no-contact order in force between appellant and the father of J.A.S., the social worker "did note towards the end of one of the visits with [appellant] that [J.A.S.'s father] was upstairs, in one of the bedrooms" and that he told the social worker "he had a lot of concerns with things going on at [appellant's] home concerning . . . some of the safety network members were using drugs, that there were drugs in [appellant's] home."

Appellant argues that she truly loves her children, would do anything for them, and has a strong bond with them, but the support she cites is her own testimony or the testimony of family friends, not of the experts who worked with and evaluated her and her children. Thus, the district court did not abuse its discretion by concluding that appellant was palpably unfit to be a parent because of her consistent conduct in letting adult males create an unsafe environment for children in her home.

2. Failure of CCCSS's reasonable efforts to reunite the family

Parental rights may be terminated if, "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). CCCSS states that appellant and her family had received almost $150,000 in services, including:

> child protection assessment and investigation, case management by multiple social workers, medical consultations, school consultation, referral for early intervention, family group conferencing, relative/kinship search, parent search, foster care placement, clothing and medical supplies, team meetings and case planning meetings, supervised visitation, parenting coaching services, safety planning, safety and support network education and meetings, culturally sensitive parenting assessment, comprehensive psychological assessment and testing, psycho-sexual evaluation, gas cards and transportation, food support, rent, utilities, trial home visit, individual therapy and related services, drug testing, expert review of medical records, ICPC referral, hotel stays, food costs, transportation for prospective relative placement and custody assistance . . . .

Although appellant does not dispute that she received these services, she argues that "CCCSS had other options to assist [her], such as family foster care [or] referral to

another therapist . . . ." But a social services agency is not required to make every possible effort to reunify a family; it is required to make reasonable efforts. Minn. Stat. § 260.012(a) (2012).

Testimony also supported the district court's conclusion that reasonable efforts to reunite appellant's family had been made and had failed. *See* Minn. Stat. § 260C.301, subd. 1(b)(5) (providing that the failure of such efforts is a basis for termination of parental rights). A social worker was asked, "What is the likelihood that any services provided at this point would result in the children being returned to the care of . . . [appellant] in the foreseeable future?" She answered "I believe the possibility of that happening is very low." When asked, "In your professional opinion . . . [i]s there anything else that you could have offered . . . that might have brought these kids home to their mother?", she answered, "I don't believe so because I don't believe [appellant's] mental health would have allowed it." When asked if appellant had "requested any additional services from the agency," the social worker answered, "No, she had not." The guardian ad litem (GAL), when asked "Are there any services that you believe [CCCSS] either could or should have offered to [appellant] to alleviate the issues that brought this to the Court's attention . . . ?", said "No."

The district court did not abuse its discretion in concluding that Minn. Stat. § 260C.301, subd. 1(b)(5), provides a basis to terminate appellant's parental rights.

3. Egregious harm to a child

Parental rights may be terminated if "a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of

regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care." Minn. Stat. § 260C.301, subd. 1(b)(6). The district court found that A.L.M. suffered egregious harm while in appellant's care, namely caregiver-fabricated illness (f/k/a medical abuse) and failure to thrive. Appellant argues that CCCSS has not shown A.L.M. suffered egregious harm.

But testimony supports the district court's finding to the contrary. Appellant's family physician, when asked whether A.L.M.'s descriptions of her seizures indicated "some form of coaching," said she was "concerned about that possibility." The social worker testified that, in reviewing all of A.L.M.'s medical records, "there was only one hospital that had not treated [her] in all of [the] Twin City area and that hospital declined to take her due to reports that [appellant] was filing lawsuits" against other hospitals.

A.L.M. was also treated at the Mayo clinic. A Mayo clinic physician said A.L.M. was reported to have had seizures in infancy and there had been reports of "seizures in the more recent history . . . that were not confirmed to be seizures." When asked if it was "likely [A.L.M.] has never had seizures," the physician said, "I think that's probably true." The Mayo clinic physician also noted that, except for being small, A.L.M. had no physical problems and no need for the G-tube that had been implanted in October 2011, because she is able to eat normally.

Another physician who testified as an expert witness said her opinion was "certainly that [A.L.M.] is a child victim of fabricated signs and symptoms that led to extensive medical tests and treatments that she did not need" and that resulted in A.L.M.

having "an image of herself that needs to be changed." When asked if A.L.M.'s experience indicated "a danger to [appellant's] other children," the expert answered "Very definitely . . . [because appellant] could do this to any child who is in her care." Because of appellant's fabrication of A.L.M.'s illnesses, the expert recommended that none of the children be returned to her.

The district court's conclusion that Minn. Stat. § 260C.301, subd. 1(b)(6), provided a basis for terminating appellant's parental rights to J.A.S. and A.J.D. was not an abuse of discretion.

4. Neglected and in foster care

A.J.D., now five and a half, has been in foster care for over a third of her life, and J.A.S., four, has been in foster care for over half her life. Parental rights may be terminated to children who are neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8). To be designated as "neglected and in foster care" within the meaning of Minn. Stat. § 260C.301, subd. 1(b)(8), a child must have been placed in foster care by court order and have parents whose circumstances, condition, or conduct are such that the child cannot be returned to them and who have "willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child." Minn. Stat. § 260C.007, subd. 24 (2012).

Appellant's circumstances, condition, and conduct are such that the children cannot be returned to her. Her therapist testified that she had to terminate treatment of appellant because appellant altered documents the therapist had written, posted the altered versions on a blog, and would not take them down when requested to do so. The

social worker testified that appellant "has ongoing mental health concerns that she does not appear to be able to be attentive to for whatever reasons, [which] gets in the way of . . . providing safe parenting for these girls." The GAL testified, "I don't believe that [appellant] has exhibited any insight or awareness as to what she might need to do to make her home a safe place for these children to be in."

Appellant also failed to meet reasonable expectations with regard to visitation of her children. The social worker testified that, when the three younger children were on a trial home visit, appellant refused to see the oldest child or to let her visit the younger children on at least four occasions, causing great distress to the oldest child. The social worker also testified that, when appellant had disagreements with her or other CCCSS personnel, "she would refuse visitation with her kids to make a point. Emotionally that became very difficult for the kids."

Appellant testified that she does not have a problem with raising her children, does not need to change anything, and does not think she could have done anything differently. Thus, appellant sees no need to change the conditions that led to the children's out-of-home placement. The district court did not abuse its discretion in deciding that Minn. Stat. § 260C.301, subd. 1(b)(6), provides a basis for the TPR.

5. Best interests of the children

"[I]n terminating parental rights the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *J.R.B.*, 805 N.W.2d at 902 (citing Minn. Stat. § 260C.301, subd. 7). The GAL testified that it was in the children's best interests to

terminate appellant's parental rights because "they've been in placement or out of home . . . way too long for them. They need permanency." The social worker testified that the children are now in a foster home with parents who "have really stepped up and forged a relationship with [them] and are interested in adopting. . . . [I]t would be difficult for me to recommend anything different [than] having those kids adopted by the home they're in at this point in time."

Neither the GAL nor the social worker nor any of the other professionals involved with appellant's children testified that it would be in their best interests to return to appellant. Moreover, the professionals' testimony provides ample support for the district court's findings that "[appellant] cannot safely parent [the children], and will not be able to safely parent them in the foreseeable future" and that the children "have been in several foster care settings since . . . January 2012"; "need a permanent, safe and stable home now"; "are at high risk for medical abuse if they were returned to [appellant's] custody"; "are at high risk for educational neglect if they were returned to [appellant's] custody"; "are at high risk for neglect if they are returned to [appellant's] custody"; and "are at high risk of harm due to [appellant's] mental health issues."

Appellant argues that termination of her parental rights is not in the children's best interests because the children "are well-bonded with their mother" and "[s]he loves them and they love her." In support of this, she cites to her own testimony that "I love and care for all four of my children" and "[I] and my children were very, very close." But she

offers nothing other than her own testimony to refute the district court's findings or its determination that the TPR is in the children's best interests.

Affirmed.