STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1704

In the Matter of the Welfare
of the Children of:
S. P. and D. P., Parents.

Filed February 21, 2012
Reversed and remanded
Klaphake, Judge

Blue Earth County District Court
File No. 07-JV-10-2362

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Susan Kohls, St. Peter, Minnesota (Guardian ad Litem)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Crippen, 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

KLAPHAKE, Judge

On August 31, 2011, the district court ordered termination of the parental rights of appellant S.P. and D.P.[1] to their children, V.P., born on December 5, 2006, and M.P., born on August 12, 2010. The district court based its termination decision on Minn. Stat. § 260C.301, subd. 1(b)(2), (5), and (8) (2010), concluding that appellant substantially, continuously, or repeatedly refused or neglected to comply with her parental duties by failing to provide for the children's needs, that reasonable efforts by the county failed to correct the conditions leading to the placement, and that the children remained neglected and in foster care. Because the record does not show that conditions that existed to support removal of the children from their parents' home remained at the time of the district court decision to terminate appellant's parental rights, and because the evidence upon which the district court primarily relied in reaching its decision to terminate was not current, we reverse the termination order and remand for further proceedings.

D E C I S I O N

Appellate courts review a termination of parental rights decision "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." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). Normally, "it is presumed that [a] child's best interests are served by being with a parent." *In re Welfare*

[1] D.P. voluntarily terminated his parental rights on August 3, 2011, and is not a party to this appeal.

of P.R.L., 622 N.W.2d 538, 543 (Minn. 2001). To protect this interest, the district court must find that a basis for termination of parental rights is shown by clear and convincing evidence. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008); *see* Minn. Stat. § 260C.301, subd. 1(b), 7 (2010). This court "closely inquire[s] into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385; *see In re Children of Vasquez*, 658 N.W.2d 249, 252 (Minn. App. 2003) ("[T]his court exercises great caution in proceedings to terminate parental rights."). Further, the evidence supporting termination "must relate to conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *P.R.L.*, 622 N.W.2d at 543; *In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). Ultimately, "[a] district court may terminate parental rights only for grave and weighty reasons." *In re Children of Vasquez*, 658 N.W.2d at 253.

Based upon our careful review of the record, we cannot conclude that clear and convincing evidence existed at the time of the August 2011 hearing to support termination of appellant's parental rights at that time. The record shows that appellant was sixteen years old in 2006, when she became pregnant with V.P., and she and D.P. generally lived together with the child in the trailer home of appellant's mother. In July 2010, when appellant was eight months pregnant with her second child, M.P., the family came to the attention of respondent Blue Earth County when it was discovered that they were living in squalor and that the home was unsafe.

The children were adjudicated in need of protection in September 2010 and initially ordered to remain in the physical control of their parents subject to protective supervision by respondent. In September 2010, appellant complied with respondent's request that she complete a psychological evaluation; the psychologist who conducted the evaluation did not recommend any individual therapy because appellant reported experiencing no emotional distress and being satisfied with her life.[2] The parents and extended family cooperated in repairing the home. However, in late November 2010, the children were removed from the home and placed in foster care after respondent discovered that the home was not consistently clean, that the children were neglected, and that non-family members were hanging out there.

A police report was filed in December 2010 after D.P. "trashed" the home while he was angry; he and S.P. eventually split, and D.P.'s parental rights were voluntarily terminated as to both children.

In January 2011, appellant was hospitalized after having an anxiety attack and anger outbursts. Thereafter, she was assigned a psychiatric clinical nurse, and she began taking prescribed medication for depression and anxiety. Respondent did not request an updated psychological evaluation but did file a permanent placement petition in May 2011, which resulted in termination of both parents' rights to the children in August 2011.

[2] Despite the psychologist's recommendation, respondent referred appellant for individual therapy. Appellant met once with a therapist and did not attend four other scheduled appointments.

While appellant may eventually prove to be a person who is incapable of parenting her children, we conclude that the district court did not have clear and convincing evidence to support termination of her parental rights in August 2011. At that time, she recognized and began to address her mental health issues, which may have played a large role in her conduct as a parent. Without a current psychological evaluation and proper treatment, it is unknown whether appellant will be able to parent her children within the reasonably foreseeable future. In addition, even despite her mental health issues, the record shows that appellant is bonded with V.P. (less so with M.P., whom she has had little opportunity to parent since his birth), and has made efforts to provide a clean and safe home for the children such that at the time of the permanency hearing the social worker stated that the home was no longer a "trash home." Given the mandate of *P.R.L.*, *T.D.*, and similar cases, that parental rights may be terminated only for grave and weighty reasons, based only on conditions that exist at the time of termination, and that will continue for a prolonged, indeterminate period, we conclude that the district court's termination must be reversed and the case remanded for further proceedings. While the district court found that appellant's "circumstances are not likely to change[ ] for the reasonably foreseeable future," this finding is clearly erroneous in light of other findings and recent evidence showing that appellant's circumstances do not meet the permanency requirements mandated by law. Upon remand, the district court may, among other things, order further psychological evaluation and follow-up care for appellant and further supportive services to be provided by respondent, as necessary.

Reversed and remanded.