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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1810

In the Matter of the Welfare of the Child of: E. M. H. and E. E. B.

Filed March 12, 2012
Affirmed
Kalitowski, Judge

Crow Wing County District Court
File No. 18-JV-11-2572

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E.E.B., Brooklyn Center, Minnesota (pro se respondent)

Barbara Bogdanovich, Pequot Lakes, Minnesota (guardian ad litem)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

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

KALITOWSKI, Judge

Appellant E.M.H. challenges the district court order terminating her parental rights to her eight-year-old daughter D.F.B., arguing that the district court erred by finding that respondent provided reasonable efforts to rehabilitate her and reunify her with D.F.B. and that the evidence does not support any statutory ground for termination. We affirm.

FACTS

Appellant E.M.H. is the mother of D.F.B., a child born on April 23, 2003. E.E.B. is D.F.B.'s adjudicated father because he signed a Recognition of Parentage. Because she was not married when D.F.B. was conceived or born and E.E.B. has not sought custodial rights, appellant is D.F.B.'s sole custodian.

Appellant has suffered from a long-term dependency on mood-altering chemicals. She began drinking at age 9 and entered treatment for alcohol addiction when she was 18 years old. She relapsed and continued to use alcohol, marijuana, and crack cocaine for approximately 15 years until 1997. Although appellant abstained from alcohol for approximately five years between 1997 and 2006, she relapsed on January 1, 2006, and has battled addiction to alcohol since. During her period of abstinence from alcohol, appellant used other mood-altering chemicals such as painkillers, crack cocaine, and marijuana. Appellant's longest period of abstinence from all mood-altering chemicals was between 1997 and 2001. She has been to chemical-dependency treatment between 8 and 11 times.

As a consequence of appellant's chemical use, D.F.B. was placed out of the home in Hennepin County between 2007 and 2009. D.F.B. was removed from appellant's care after appellant was arrested for misdemeanor child endangerment. The charge stemmed from an incident where appellant attempted to take a child, whom appellant believed to be her own, from the motel room of another guest. The guest called police, who found appellant and D.F.B. at a nearby business. A breathalyzer indicated that appellant had an alcohol concentration of 0.43. In 2005, and again in 2010 after Ramsey County initiated

an investigation, appellant temporarily placed D.F.B. in her sister's care because her drug or alcohol use prevented her from safely caring for D.F.B.

On January 6, 2011, appellant was late picking up D.F.B. from school and was subsequently found stumbling down an alley toward the school. Appellant appeared to be under the influence of chemicals and admitted to taking three clonazepam pills. D.F.B. was placed into shelter foster care, and on April 26, 2011, the district court adjudicated D.F.B. a child in need of protection or services.

Appellant entered and completed an inpatient chemical dependency treatment program at the Pioneer Recovery Center, and was discharged on April 25, 2011, with a list of aftercare recommendations. Following her discharge, appellant initially complied with some aspects of her case and aftercare plans, but relapsed three weeks later on the eve of a scheduled visit with D.F.B. As a result of her drinking, appellant missed the visit with D.F.B. and failed to maintain contact with her social worker, Amy Kummet. Appellant began drinking rubbing alcohol and, between May 29 and July 21, 2011, presented at the hospital eight times complaining of chest pains. Because of appellant's continuous alcohol use, respondent filed a petition to commit appellant. The commitment was stayed and appellant again entered treatment as a condition of her stayed commitment.

On June 14, 2011, respondent filed a petition to terminate the parental rights of appellant and E.E.B. to D.F.B. E.E.B. agreed to a voluntary termination of his parental rights, but appellant denied the petition and proceeded to trial on September 6, 2011.

At trial, appellant testified that she had completed her latest treatment program and was to be discharged to a halfway house. She further testified that she had been sober since July 30, 2011, six weeks earlier. Under questioning, appellant agreed that "this addiction has taken hold, and despite your best efforts, you haven't been able to keep [D.F.B.] safe from your addiction." When asked why her current recovery would be different from her previous attempts at sobriety, she responded, "Because I'm tired. I'm sick and tired of being sick and tired, and I want my daughter back." But appellant also acknowledged that she was sick and tired and wanted her daughter back before she relapsed in May 2011.

The guardian ad litem (GAL), Barbara Bogdanovich, also testified at trial. She stated that she is "very fond" of appellant and was initially supportive of reunification, but that she could no longer support reunification "under the current conditions." Although the GAL believed that "[w]hen [appellant] was sober, she was a good mom, loving mom," she testified that she could only recommend reunification after appellant has shown one year of sobriety outside of a structured environment and "she's just not there yet again."

Kummet agreed with the GAL that permanency is in D.F.B.'s best interests. She testified that, by the time of trial, D.F.B. had been in out-of-home placement for a total of nearly three of her eight years. She stated, "The fact that [D.F.B.] spent this significant amount of time in out[-]of[-]home placement in her eight years of life is a lot. I think she needs to know . . . where she's going to be." Kummet recommended against reunification in the reasonably foreseeable future given appellant's history of treatment

and relapse and the potential for harm to D.F.B. if she is returned to appellant and later removed again.

After determining that termination is in D.F.B.'s best interests and several statutory grounds exist to support termination of appellant's parental rights, the district court terminated appellant's parental rights.

D E C I S I O N

When reviewing a district court's decision to terminate parental rights, "appellate courts are limited to determining whether the findings address the statutory criteria, whether those findings are supported by substantial evidence, and whether they are clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997) (citation omitted). We review the district court's findings of the underlying facts for clear error, and "review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "Considerable 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 L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). But although appellate courts defer to the district court's findings, appellate courts exercise great caution in proceedings to terminate parental rights. *In re Welfare of the Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). This court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998).

I.

Appellant argues that the evidence does not support the district court's conclusion that respondent made reasonable efforts toward reunification. Before parental rights may be terminated, reasonable efforts must be made to reunite the child with the parent. Minn. Stat. § 260C.301, subd. 8(1) (2010); *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). Even if statutory grounds for termination exist and termination is in the best interests of the child, this court must determine whether there is clear and convincing evidence that the county made reasonable efforts to reunite the family. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005).

"Reasonable efforts" means "the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family." Minn. Stat. § 260.012(f) (2010). In determining whether reasonable efforts have been made to reunify the family, the district court must consider whether the services were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h) (2010). "[A] case plan that has been approved by the district court is presumptively reasonable." *In re Welfare of the Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008).

"Efforts to help parents generally are closely scrutinized, because public agencies may transform the assistance into a test to demonstrate parental failure." *In re Welfare of J.H.D.*, 416 N.W.2d 194, 198 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988).

Whether the county's services constitute "reasonable efforts" depends on the nature of the problem presented, 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). The assistance must go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help. *Id.* Such help must focus on the parent's specific needs. *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987), *review denied* (Minn. Sept. 18, 1987).

Here, the district court found that respondent provided the following services to appellant and D.F.B.: (1) a chemical-use assessment; (2) inpatient chemical-dependency treatment and aftercare; (3) random drug testing; (4) supervised visitation, with a volunteer driver; (5) an Adult Rehabilitation Mental Health Services (ARMHS) worker; (6) medical care; (7) mental illness/chemical dependency therapy group; (8) a referral for individual therapy; (9) psychiatric services; (10) Women's Wellness Group; (11) law enforcement welfare checks; (12) unannounced home visits; (13) case management services; (14) foster care for D.F.B.; (15) medical and dental care for D.F.B.; (16) educational services for D.F.B.; (17) mental health services for D.F.B.; (18) relative search efforts for placement; and (19) a cell phone for D.F.B. to facilitate telephone contact with appellant.

The district court also noted the extensive services Hennepin and Ramsey counties provided during appellant's previous involvement with child protection and found that:

> Over the past four years, Hennepin County Social Services, Ramsey County Social Services, and Crow Wing County Social Services have made a multitude of efforts to assist

> [appellant] in addressing her chemical dependency, mental health, housing, and parenting issues in order to develop an ability to prove a safe and stable home for the minor child.

Based on these findings, the district court concluded that reasonable efforts were made toward reunification.

Appellant challenges the district court's conclusion, contending that the services offered were "pro forma and a rehash of attempts at assistance that had previously failed," that appellant "was simply shipped off to a treatment facility for the 12th time," and that respondent "failed to adapt and evolve when [appellant] stumbled."

We reject appellant's argument that the failure of appellant's previous attempts at treatment to bring about lasting, stable sobriety renders further treatment unreasonable. A county's efforts toward reunification need not guarantee success to be reasonable. *See In re Welfare of A.V.*, 593 N.W.2d 720, 723 (Minn. App. 1999) ("The demand of reasonable efforts is one that is entirely constructive, aimed at saving the savable among parents having difficulty providing care for their children."). The reasonableness analysis turns, instead, on the factors listed in Minn. Stat. § 260.012(h). Here, appellant testified that chemical use is her primary destabilizing factor. In light of this need, the chemical assessment, inpatient treatment, and aftercare programming respondent provided were directly relevant to appellant's needs, available and accessible, timely, and realistic under the circumstances.

Appellant was discharged from treatment in April 2011 with an extensive list of aftercare services, including placement in a halfway house and participation in support groups, to assist her in maintaining her fragile sobriety. And to facilitate appellant's

participation, respondent offered transportation to court and aftercare programs. But appellant did not take meaningful advantage of the aftercare programs offered to her. She refused placement in a halfway house in favor of returning to her own apartment, maintained only sporadic contact with her ARMHS worker, attended few support groups other than AA, and did not practice grounding techniques or complete reading assignments as recommended. Appellant's failure to meaningfully comply with her aftercare recommendations undermines her argument that her case plan was unreasonable.

In addition to chemical dependency, the record reflects that appellant also suffers from depression and anxiety. In light of appellant's mental-health issues, respondent crafted a case plan that included individual therapy, a psychiatric evaluation, and treatment for posttraumatic stress disorder. Appellant's ARMHS worker facilitated appellant's participation in these services by making appointments with mental health providers. And respondent was also prepared to provide a psychological evaluation once appellant demonstrated 30 days of sobriety outside of a structured living environment. These services are also appropriate and directly relevant to appellant's needs. But appellant failed to attend any appointments and never demonstrated the requisite period of sobriety before a psychological evaluation could be completed.

We also reject appellant's argument that respondent failed to adapt appellant's case plan after appellant's relapse. When respondent learned that appellant had relapsed, was drinking excessive amounts of rubbing alcohol, and presented a danger to herself, respondent initiated precommitment screening and filed a petition to have appellant

committed. As a condition of staying the commitment, appellant was required to return to treatment. And upon discharge, respondent again offered appellant placement in a halfway house.

Appellant also faults respondent for not providing her with a cell phone to maintain contact with case workers. Although the evidence shows that appellant struggled to maintain communication with Kummet between the time she was discharged from treatment and when she relapsed because she was often out of minutes on her prepaid phone, appellant was able to maintain regular contact with her ARMHS worker during that period. Kummet adapted to these communication challenges by making an unannounced visit to appellant's apartment and having law enforcement conduct a welfare check. And a cell phone would not have improved communication after appellant relapsed because appellant testified that she chose to cut off contact with case workers and was "isolating."

On this record, we conclude that clear and convincing evidence supports the district court's finding that respondent made reasonable efforts toward reunification.

II.

District courts may terminate parental rights on the basis of one or more of the nine criteria listed in Minn. Stat. § 260C.301, subd. 1(b) (2010). The district court "need find only one of the statutory grounds exists to terminate parental rights." *S.Z.*, 547 N.W.2d at 890. "This evidence 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." *In re Welfare of P.R.L.*, 622 N.W.2d

538, 543 (Minn. 2001). The primary consideration in any termination proceeding is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2010).

Here, the district court concluded that termination of appellant's parental rights to D.F.B. was necessary because: (1) appellant has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed on her by the parent and child relationship, Minn. Stat. § 260C.301, subd. 1(b)(2); (2) appellant is palpably unfit to parent, *id.*, subd. 1(b)(4); (3) reasonable efforts have failed to correct the conditions leading to D.F.B.'s out-of-home placement, *id.*, subd. 1(b)(5); and (4) D.F.B. is neglected and in foster care, *id.*, subd. 1(b)(8).

Appellant argues that the record does not support these determinations by clear and convincing evidence. We disagree.

Neglect of parental duties

Under Minn. Stat. § 260C.301, subd. 1(b)(2), a statutory basis for involuntarily terminating parental rights exists if

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable[.]

Here, the district court concluded that appellant has substantially, continuously, and repeatedly refused or neglected to comply with her parental duties because "[d]espite

numerous opportunities in three separate counties over the past four years, [E.M.H.] has failed to demonstrate an ability to maintain sobriety and address her underlying mental health issues." As a result, the district court found that D.F.B. "has been in court-ordered out-of-home care for a period of time much longer than allowed by statute and much longer than is consistent with the best interests of the minor child."

Appellant argues that the district court's conclusion is erroneous because she has "meaningfully started down the road to a lasting recovery." But the district court acknowledged appellant's short period of sobriety leading up to trial before finding that appellant has "failed to demonstrate an ability to *maintain* sobriety for a significant period of time while in a non-structured living environment." (emphasis added). The evidence supports the district court's findings. Appellant testified that she had been through treatment between 8 and 11 times in her life, and the longest she has maintained sobriety from mood-altering chemicals was four years between 1997 and 2001. As a result, D.F.B. spent nearly three years in out-of-home placement while appellant was in treatment, imprisoned, or working on child protection case plans. And the six-week period of pretrial sobriety appellant demonstrated occurred entirely within the structured setting of an inpatient treatment facility. Despite her testimony that she thought this time is different because she is "sick and tired of being sick and tired, and [she] want[s] [her] daughter back," she admitted that was also true during her previous attempts at sobriety. This evidence supports the district court's determination that appellant has neglected to comply with her parental duties.

Palpably unfit

A statutory basis for involuntarily terminating parental rights exists if

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of 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). To find that a parent is palpably unfit, "it must appear that the present conditions of neglect will continue for a prolonged, indeterminate period." *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

The district court concluded that appellant is palpably unfit because repeated attempts at treatment have "been unsuccessful in helping [appellant] address her chemical[-]dependency issues on a long-term basis," and that "[t]he chaotic and unsafe environment provided by [appellant] has caused [D.F.B.] to have aggressive behaviors and attachment issues." The court further found that "[appellant] is unable to provide that permanency and stability in the reasonably foreseeable future."

We reject appellant's argument that the "conditions that led to the termination petition, specifically [appellant's] struggles with sobriety, were in the process of being corrected." Appellant's lengthy history of treatment and relapse renders the six weeks of pretrial sobriety she demonstrated insufficient assurance that she will be able to care for D.F.B. into the foreseeable future. And the evidence amply supports the district court's finding that appellant's substance abuse has negatively impacted D.F.B. Appellant

admitted that her chemical use has prevented her from keeping D.F.B. safe, and has caused D.F.B. to have issues with abandonment and trust.

Appellant also argues that she is not palpably unfit because the GAL testified that "she would give [appellant] 'more time' to establish her sobriety." But appellant's argument takes the GAL's testimony out of context. The GAL was opposed to giving appellant more time and testified that she opposed reunification because she would need to see appellant maintain at least a year of sobriety outside of structured environments before she would recommend reunification with D.F.B., and appellant is "just not there yet again." It was only in response to appellant's counsel's hypothetical scenario where "we were only dealing with January of 2010 forward" and "time limits weren't as the circumstance presents itself here" that the GAL agreed that she "would give it a little more time." We conclude that the evidence supports the district court's findings, and the district court's conclusion that appellant is palpably unfit to parent is not an abuse of discretion.

Failure to correct conditions

A statutory basis for involuntarily terminating parental rights exists if the district court determines 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).

The district court concluded that reasonable efforts failed to correct the conditions that led to D.F.B.'s out-of-home placement. The court found that D.F.B. was removed from appellant's care because of substance abuse and respondent provided reasonable

efforts to address appellant's chemical dependency and reunite appellant with D.F.B. In response to services, the district court found that appellant completed treatment but "admittedly did not comply with her aftercare plan," relapsed shortly after, agreed to return to inpatient treatment as a condition of a stay of commitment, and completed treatment as of the day of trial. The court acknowledged that appellant had been sober for six weeks but found that appellant's recent sobriety was not sufficient to demonstrate that she had corrected her chemical dependency. The court found, "[Appellant] insists that this time in treatment is different because she is older and wants her daughter back in her custody. However, she admits that the same was true when she went into treatment in January 2011, but she still relapsed shortly after leaving treatment in April 2011." Referring to appellant's history of chemical-dependency treatment, the court found that "such programming has been unsuccessful in helping [appellant] address her chemical[-] dependency issues on a long-term basis." These findings are supported by the evidence and indicate that the district court did not abuse its discretion by determining that reasonable efforts have failed to correct the conditions that led to D.F.B.'s out-of-home placement.

Appellant's argument that she complied with several of her court-ordered case-plan requirements does not alter our conclusion. Although she participated in some aspects of her case plan, the evidence demonstrates that appellant neglected significant portions of her aftercare plan and mental-health treatment, and ultimately failed to demonstrate that she had resolved her chemical-dependency issues.

Neglected and in foster care

A statutory basis for involuntarily terminating parental rights exists if clear and convincing evidence shows that the child is neglected and in foster care. Minn. Stat. § 260C.301, subd. 1(b)(8). "Neglected and in foster care" refers to a child

> (a) who has been placed in foster care by court order; and
>
> (b) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
>
> (c) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or 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 (2010).

The district court concluded that D.F.B. is neglected and in foster care. The court found that D.F.B. has been in court-ordered out-of-home placement for much longer than the statutory timelines permit, that D.F.B. cannot safely be returned home because of appellant's history of substance abuse, and appellant failed to take advantage of case plan services designed to adjust her circumstances, condition, or conduct. Specifically, the district court found that appellant "did not comply with her aftercare plan" and "relapsed and resumed alcohol use approximately two weeks after she was discharged from inpatient treatment." The court further found that appellant failed to complete a psychological evaluation, and missed a drug test. Moreover, the court noted that appellant completed only one visit with D.F.B., missed another scheduled visit because

she was drinking, and had not seen D.F.B. since April 2011. These findings are supported by the evidence. Therefore, the district court did not abuse its discretion in determining that D.F.B. is neglected and in foster care.

The district court properly considered the statutory requirements in making its permanent placement decision. Because substantial evidence supports its determination that respondent made reasonable efforts toward reunification, and statutory grounds exist to terminate appellant's parental rights to D.F.B., the district court's decision to terminate appellant's parental rights is not an abuse of discretion.

Affirmed.