

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-795

DEPARTMENT OF CHILDREN AND
FAMILIES and GUARDIAN AD
LITEM PROGRAM,

Appellants,

v.

A.S., the Mother of J.W., Jr.,
J.M.H., K.A.P., & S.R.P.; B.R.H.,
the Father of J.M.H.; and K.P.,
the Father of K.A.P. & S.R.P.,

Appellees.

On appeal from the Circuit Court for Escambia County.
Michael G. Allen, Judge.

August 25, 2020

PER CURIAM.

The Florida Department of Children and Families and the Guardian Ad Litem program appeal a final judgment denying a petition to terminate parental rights as to the parents of four children (one mother and three fathers, one deceased). We affirm.

Facts.

The record supports the trial court's findings of the following facts. The mother's current husband, who was the father of two of the children involved here, sexually abused another of the children, his four-year-old step-daughter. The mother initially denied the abuse, and allowed her husband continued access to this girl as well as the other children. The children were adjudicated dependent in 2017.

Although the mother initially failed to recognize the need to protect the children and failed to comply substantially with her case plan for reunification, her understanding and behavior improved. The trial court found that she changed her attitude and took steps to comply in 2018 and 2019, completing her tasks or actively working on them by the time of the TPR hearing. She finally admitted the abuse occurred. She also filed a pro-se petition to dissolve her marriage to the abusive father.

As of the TPR hearing, the trial court found, the mother had demonstrated understanding of the issues involved, compliance with her case plan, and a willingness to continue engaging in protective services. The trial court was unable to conclude by the applicable standard of clear and convincing evidence that further services would be futile or ineffective. To the contrary, the trial court concluded that "there is significant possibility that the mother could in fact substantially comply with the case plan if she continues to participate in the services."

As to one of the two living fathers, the trial court found he abandoned his child and made no significant contribution to the child's care or to maintaining a relationship. The State's primary concern with this father was his failure to appreciate the need to protect his child from the mother's abusive husband. By the time of the TPR hearing, the trial court found that this father was providing some support for the child; and, although his visitation was sporadic, there was not clear and convincing evidence that he lacked the intent to function as a parent to the child. This father had participated somewhat in services, and the concern with lack of protective capacity was not established by clear and convincing evidence.

The trial court found that the other living father (of two children), who sexually abused his four-year-old step-daughter, failed to care for or protect his children appropriately. As of the TPR hearing, he had not completed services in his case plan, but testified that ability to pay was an obstacle as to some services and that he was working on others. The trial court reserved ruling as to this father pending updated evidence.

In the order under review, reflecting the facts that existed as of the adjudicatory hearing, the trial court concluded that legal grounds for termination of parental rights did not exist. The trial court reviewed the statutory factors and found them on balance either neutral or less than clear and convincing. Only the GAL's recommendation clearly weighed in favor of termination. Without the requisite clear and convincing evidence, the trial court declined to terminate parental rights.

Analysis.

Termination of parental rights is necessarily fact-intensive. Appellants point to record evidence contrary to the trial court's findings, particularly evidence more remote in time from the adjudicatory hearing. They also argue, among other things, that the trial court failed to further the children's interests in permanency.

The trial court's findings are presumed correct, but we must be able to find that the record contains competent, substantial evidence supporting the trial court's findings, which in turn must be based on clear and convincing evidence. *N.L. v. Dep't of Children & Family Servs.*, 843 So. 2d 996, 1000–01 (Fla. 1st DCA 2003). We must consider the best interests of the children, but cannot reweigh the evidence or overturn the trial court's assessment of the evidence unless it is "unreasonable as a matter of law." *N.L.*, 843 So. 2d at 999; see *J.P. v. Fla. Dep't of Children & Families*, 183 So. 3d 1198, 1204 (Fla. 1st DCA 2016) (explaining our review is "highly deferential"). Applying these standards to the record and the ruling before us, we conclude that we must affirm.

AFFIRMED.

ROBERTS, ROWE, and KELSEY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Sarah J. Rumph, Appellate Counsel, Department of Children and Families, Tallahassee, for Appellant Department of Children and Families; Thomasina Moore, Statewide Director, and Sara Elizabeth Goldfarb, Senior Attorney, Guardian ad Litem Program, Tallahassee, for Appellant Guardian ad Litem Program.

David Maldonado of the Maldonado Law Firm, P.A., Lakeland, for Appellee A.S.; Crystal McBee Frusciante and Anne Marie Perine, Assistant Regional Conflict Counsel, Office of Criminal Conflict and Civil Regional Counsel Region One, Tallahassee, for Appellee B.R.H.; Kari Jorma Myllynen, Fort Lauderdale, for Appellee K.P.